

SURFACE TRANSPORTATION BOARD

TRIBAL CONSULTATION SUMMIT

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Transcript of Proceedings
January 15, 2008
at 9:10 a.m.

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PRESENT:

Cathy Glidden, Surface Transportation Board
Randy Withrow, Louis Berger Group
Dave Bibler, Louis Berger Group
Herb Jones, DM&E Railroad
Ian Ritchie, Forest Service
Jim Whitted, Sisseton-Wahpeton Oyate
Alan Stanfill, HDR Engineering
Doug Jackson, HDR Engineering
Melissa Lundberg, HDR Engineering
Curley Youpee, Ft. Peck, Assiniboine & Sioux
Elgin Crows Breast, 3 Affiliated Tribes
JoAnn White, Northern Arapaho
Pamela Halverson, Lower Sioux Community
Robert Campbell, Santee Sioux
Erin Salisbury, SWCA
Gary Smith, BLM
Waste'win Young, Standing Rock
Paige Olson, South Dakota State Historic Preservation Office
Charlie Spotted Tail, Rosebud Sioux Tribe
James Kangas, Bureau of Reclamation
Cindy Larom, Bureau of Reclamation
Gary Robinette, Ponca Tribe of Nebraska
Debbie Robinette, Ponca Tribe of Nebraska
Joyce Whiting, Oglala Sioux
Faith Spotted Eagle, Yankton
Sam Allen, Flandreau Santee Sioux
Conrad Fisher, Northern Cheyenne
Dianne Desrosiers, Sisseton-Wahpeton Oyate

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PRESENT (Continued):

William Ambrose Little Ghost, Spirit Lake
Eileen Little Ghost, Spirit Lake
Mike Madson, HDR
Tony Provost, Omaha Tribe
Amen Sheridan, Omaha Tribe
Alice Tratebas, BLM
Scott Jones, Lower Brule
Randy Henke, DM&E
Russell Eagle Bear, Rosebud
Ben Rhodd, Rosebud Sioux
Steve Defender, SRST
Tim Mentz, Sr., SRST
Chase Iron Eyes, Standing Rock
Ron His Horse Is Thunder, SRST

1 The following proceedings were taken at the
 2 Holiday Inn, Board Room, Rapid City, South Dakota, on the
 3 15th day of January 2008, commencing at 9:10 a.m.; before
 4 Cheri McComsey Wittler, a Registered Professional Reporter,
 5 Certified Realtime Reporter, and Notary Public within and for
 6 the State of South Dakota.

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1 MS. GLIDDEN: Okay. We're going to start here, if
2 everyone has a chance to get a seat.

3 My name is Cathy Glidden. I'm with the Surface
4 Transportation Board. We're the lead federal agency involved in
5 this project, the DM&E Railroad project. And we're here today
6 to primarily discuss a work plan for future and continued tribal
7 involvement in the project.

8 And before we start I understand Mr. Little Ghost has
9 agreed to give a prayer.

10 (Mr. Little Ghost says prayer)

11 MS. GLIDDEN: Thank you. I was hoping we could start
12 with introductions at the far end with Melissa down there and
13 that as we introduce ourselves that we use the microphone for
14 the interest of our court reporter.

15 If you could tell us, you know, first your name, who
16 you are, where you're from, what your interest is in this
17 project, a little background about, you know, who you are and
18 what your involvement is in this project, maybe spend a little
19 bit of time just telling us a bit about who you are before we
20 start. Okay.

21 MS. LUNDBERG: Good morning. My name is
22 Melissa Lundberg. I'm with HDR Engineering from Sioux Falls.
23 And I will be helping with the coordination of future meetings
24 that we will have throughout 2008.

25 MR. HIS HORSE IS THUNDER: Good morning. Ron His

1 Horse Is Thunder, Chairman for the Standing Rock Sioux Tribe.
2 Interest in this is my staff tells me this is something they've
3 been engaged in a while and I need to be here to learn about it.
4 So I'm really here to learn more than anything else and to help,
5 if you will, in the process. Hopefully I can be helpful and not
6 a hindrance to this.

7 MR. IRON EYES: Chase Iron Eyes. I work with the
8 Standing Rock Sioux Tribe. I was just brought on board by
9 Chairman His Horse Is Thunder. My involvement is pretty new.
10 And having just completed law school, I'm trying to learn about
11 it from that angle, I guess that aspect of everything. And I'm
12 learning a lot as we go along. It's a crash course right now,
13 but I got some good teachers. So thank you.

14 MR. MENTZ: Good morning. My name is Tim Mentz,
15 Tribal Historic Preservation Officer for the Standing Rock Sioux
16 Tribe. And I'm here to first of all engage in consultation, but
17 I need to clarify that. My interest is to make sure that people
18 understand there's two types of consultation. And I'm here in
19 regards to 800 regulations, 36 CFR 800 regarding consultations
20 through Section 106. So I hope you understand my role here.

21 The other role that we play in this process also is
22 we're the people, if you will, that are in front of this for the
23 Standing Rock Sioux Tribe and other tribes and also that we will
24 probably require another meeting besides this because we just
25 now got handed all of these important information documents. So

1 we need time to review them, and once we review them I think
2 we'll initiate our letter to you requesting consultation under
3 Section 106.

4 Thank you.

5 MR. DEFENDER: Steve Defender, Standing Rock. The
6 integrated resources management plan, I handle that area. And
7 my involvement here is working on comprehensive management for
8 the tribe so anything that does affect the tribe does affect my
9 program also. That's the extent of my involvement.

10 MS. YOUNG: Good morning. I'm Waste'win Young. I met
11 a lot of you in October. And I came in place of Tim. And it's
12 definitely a learning experience for me. And I'm a worker ant
13 for the Standing Rock Sioux Tribe.

14 MR. RHODD: My name is Ben Rhodd. I'm an archeologist
15 and also consultant to the Rosebud Sioux Tribe in regards to not
16 only this project but many others. And I've been involved in
17 this process with DM&E since 1999. Actually 1998 I think it
18 was. And so we're here to follow up a lot with what Tim has
19 said, understanding that this is part of the Section 106
20 process. And we're here to listen and also to instruct.

21 Thank you.

22 MR. EAGLE BEAR: My name is Russell Eagle Bear, and
23 I'm the Tribal Historic Preservation Officer for the Rosebud
24 Sioux Tribe. And I guess under Section 106 I am involved.
25 That's my involvement.

1 MR. HENKE: My name is Randy Henke. I'm the vice
2 president in charge of the PRB Project for the DM&E Railroad. I
3 came here about just short of two years ago and obviously have
4 been engaged in all facets of the design and construction and
5 the permitting and the 106 process to get us to a position where
6 we can actually build this project.

7 The HDR team that's in the room here all work directly
8 for me in one way or another, but it's obviously very much a
9 team involvement with all of these different facets of a project
10 to try to pull it together. So I'm here to represent the DM&E
11 and answer any questions that may come up.

12 MR. HERB JONES: I'm Herb Jones, government affairs
13 director with the DM&E Railroad and serve as the tribal liaison.
14 My background, I'm a native South Dakotan, lived in the
15 Washington, D.C. area for about 10 years, served as the
16 Department of Energy's Direct Deputy Assistant Secretary for
17 Intergovernmental Affairs, which included tribal affairs and
18 came on with the DM&E Railroad about three years ago and have
19 worked federal, state, and tribal issues since coming on board.

20 I look forward to working with you here and in future
21 meetings too. And I'm assuming we will have future meetings to
22 get us through this process.

23 The one thing I would like to say, just if there's a
24 little bit of background history that would be helpful, I know
25 some folks are fairly new to this, but the process has been

1 around -- I think something like 10 years ago next month the
2 DM&E applied to the STB for permission for authority to build
3 and expand its existing railroad.

4 The railroad at that time, the DM&E, ran from
5 Rapid City to the Mississippi River in Minnesota. And the plan
6 was to somehow bring the line from the South Dakota line in the
7 end into the Powder River Basin in Wyoming near Gillette. A
8 number of alternative options were available that would take you
9 into the Powder River Basin. Some went around the northern end
10 of the Black Hills. Some went through the Black Hills. Some
11 went around the southern Black Hills.

12 There were numerous public meetings on the -- in the
13 process conducted by the Surface Transportation Board. There
14 were numerous tribal meetings, numerous general public meetings.
15 In the end the course that the STB ended up authorizing is one
16 that doesn't go into the current Black Hills. It goes around
17 south of the Black Hills. And it doesn't go into current
18 reservation land the way it's designed.

19 Just so you know, there were plans that had that going
20 in all different places, and there was input, important input
21 from the tribes. For instance, one of those routes would have
22 gone closer to Red Shirt there, and they went to the further
23 west with the route that was ultimately selected. Again, those
24 decisions some -- ultimately six, seven years ago were based on
25 a lot of input.

1 Since that time the STB concluded its original
2 process, issued an EIS. That EIS was challenged in the courts,
3 and ultimately it was upheld with a couple of exceptions. It
4 was remanded, the original decision was. And they came back --
5 let me get the date here for you because I want to help put this
6 in a little bit of a time line.

7 The Draft EIS was in 2000. The Final EIS was in 2001.
8 The STB approval came in January of 2002, which was challenged
9 in court. In October of 2003 the court looked at it.
10 95 percent of it they said was fine. A few issues went back.
11 Those were resolved in the final supplemental EIS in December of
12 2005.

13 And in February of 2006 the STB put out its final
14 supplemental decision. That too was challenged in court. And
15 in December of 2006 the Eighth Circuit Court of Appeals upheld
16 the entire decision. And that is if you've ever seen it a very
17 comprehensive document and the decision by the STB to grant
18 authority.

19 That concluded in December of 2006, and last summer
20 the activities were -- everybody was reengaged in this process.
21 And I think the first meetings on this round were held then
22 August of 2006. We had the meeting -- the first one was in
23 Wyoming and then in Pierre and then in Tracy. And then we've
24 had subsequent meetings. And this has got to be the third one
25 since then too. But have been constructive in coming up with

1 ways to implement the Programmatic Agreement, which is -- the
2 Programmatic Agreement, I think everybody has it. If you don't,
3 I'm sure there's copies here. But the Programmatic Agreement is
4 also one of the terms that is imposed on the DM&E under the EIS.

5 We have 147 mitigation conditions that we have to
6 meet. One of those is the implementation of the Programmatic
7 Agreement. And the Programmatic Agreement is a great framework
8 but there's work to be done to figure out exactly how you
9 implement that and I hope that's what we continue to have is a
10 constructive dialogue about that that does get us through the
11 construction process.

12 I just want to say if you have any questions, I'd be
13 happy to share my business card with you. If you want to call
14 us directly, always available. Some of you have done that. I
15 appreciate that. Hopefully we were very timely in getting back
16 to you. But we look forward to working with you. I hate to
17 take so much time, but some people I know aren't completely
18 familiar with the history. Hopefully that gives you a quick
19 rundown of kind of where we are today.

20 But thank you. And we'll look forward to a couple
21 days of good, constructive dialogue.

22 MR. JACKSON: Hello. My name is Doug Jackson. I'm a
23 civil engineer for HDR Engineering. I should say I'm employed
24 by HDR Engineering, but I work for Randy Henke. I work right
25 out of the DM&E office. I share an office right next to

1 Randy's, and I manage all of the consultants that work on the
2 project, all the civil engineers, all the environmental
3 scientists. All the cultural resources staff basically come
4 under my direction, and then I take my direction directly from
5 Randy.

6 So that's my purpose in the project. And I've been
7 working with a lot of you on trying to finalize budgets and work
8 plans and so forth and look forward to continuing to do that.

9 MR. SCOTT JONES: Good morning. My name is
10 Scott Jones. I'm with the Lower Brule Sioux Tribe. And I'm
11 glad to be here. I'm glad to see that you're holding these
12 government-to-government consultations. And I've got several
13 comments on what's involved here today and tomorrow.

14 And I'm not sure now is a good time to address them,
15 but I will ask Herb, that time line that you just very quickly
16 went over, it would be nice if we had a one-page time line that
17 addressed the major points there.

18 And I believe one of the first tribal consultations
19 was held in Williston, North Dakota in 1999, and I also believe
20 that a very early meeting was held with the Oglala -- are there
21 any Oglala representatives here?

22 Good. Because at that meeting Kevin Schieffer talked
23 in depth about developing tribal jobs. Because the proximity of
24 the railroad to the reservation line, which I believe Lower
25 Brule, Pine Ridge, and a tribe in Minnesota, the railroad passes

1 closest to those three reservations. Within 5 miles, I believe.
2 And I'm not sure if it's current. Within 10 miles of my tribe's
3 land. And I can't remember if it's Prairie Island or -- anyway,
4 one of the tribes over there in Minnesota. And I apologize for
5 not being able to remember that.

6 But there was a document developed in Williston. It
7 was an MOA. And I believe that Mr. Curley Youpee here to my
8 right will remember that because he and I actually authored that
9 MOA. And I've had a lot of discussions with people, and I've
10 heard it's not been signed. We can't find a signed document.

11 But basically why I'm here today is not only to
12 discuss the Programmatic Agreement -- which by the way was
13 developed by Mr. Dan Shinn of Burns & McDonnell and Terry Gray
14 of the Rosebud Sioux Tribe. I know my tribe commented
15 extensively on that Programmatic Agreement.

16 And the Programmatic Agreement is essentially 106.
17 And again I've got so much to say, but I'm going to try to not
18 go on and on and on because there's a lot of you that have a lot
19 to say too.

20 But the MOA developed things in the event the railroad
21 gets permitted what's going to happen if they abandon the
22 railway tracks? What's going to happen with wildlife
23 mitigation, with endangered species? What's going to happen
24 with economic development to some of the poorest people in the
25 nation, very close to which this enormous project will pass?

1 And many, many times -- we spoke with the Gray Eagles
2 and other elders as well as some of the elected leadership from
3 Pine Ridge who like most of us oppose the railroad and its
4 permit. And I'm hoping that we can look at a much bigger
5 picture here.

6 Although, it's essential that the land base
7 practitioners and tribal cultural resource issues are covered
8 and are dealt with in a meaningful and substantive way, there
9 are a lot of issues that this railroad project sat at the table
10 with many tribal delegates and agreed to deal with, not the
11 least of which is economic development for Indian people.

12 Thank you.

13 MR. SMITH: Good morning. I'm Gary Smith and I'm with
14 the Bureau of Land Management and I'm located at the Montana
15 State Office in Billings, Montana. I am the Montana State
16 Archeologist there. And we're here because we've got some
17 public land involved in this railroad project, and we're a
18 signatory to the agreement.

19 Thank you.

20 MS. TRATEBAS: I'm Alice Tratebas, and I work with the
21 Bureau of Land Management in New Castle, Wyoming. And so we're
22 concerned with the Wyoming segment. And I'm a cultural resource
23 specialist there.

24 MR. YOUPEE: Good morning. My name is Curley Youpee.
25 I'm with the Ft. Peck, Assiniboine, and Sioux Tribes. I'm also

1 the Caucasian liaison for my tribe.

2 One of the things that I think is important -- and I'm
3 glad that Scott is here back at the table again. Last time I
4 heard he was down in Argentina basting in the sun there. But I
5 heard they had a revolution there so I know he's not down that
6 way.

7 I think it's important that we also look at the
8 socio-economic impacts for tribes. And way back in 1999 we
9 developed a plan that would bring tribes into the realm of
10 economic development, including jobs. So this isn't a new
11 story. That's a long time.

12 But I think that working with the office of Surface
13 Transportation and DM&E for the sake of finding parity and
14 understanding that tribes are in the same world, you know, we
15 want to legitimize ourselves as citizens of this country in
16 preserving what we feel is right, preserving national treasures.
17 Not cultural artifacts or cultural items that pertains to
18 tribes, but national heritage as well.

19 So you make that distinction between us and national
20 heritage, and it seems like we're always singled out and taken
21 advantage of. But I think it's important that we understand
22 that tribes seek the liberties and freedoms as everyone else,
23 citizens of this country.

24 Thank you.

25 MS. HOSKINSON OLSON: Paige Hoskinson Olson. I'm with

1 the South Dakota State Historical Society. I'm the review and
2 compliance coordinator. And we are signatories to the
3 agreement.

4 MR. WITHROW: Good morning. My name is Randy Withrow.
5 I'm an archeologist by training, and I work for a company called
6 Louis Berger Group, which is based in the Cedar Rapids, Iowa
7 area. My company is working with and for the Surface
8 Transportation Board in an assistance capacity.

9 Essentially among other things we help organize
10 meetings like this one. We assist them with their report review
11 responsibilities and generally help them in whatever ways we
12 can. And I guess that's it.

13 MS. GLIDDEN: I'm Cathy Glidden. I'm with the Surface
14 Transportation Board, which again is the lead federal agency
15 that is involved in this project and approved this project. I
16 was brought on this project earlier this year -- actually
17 earlier last year now that it's 2008. And my background is in
18 archeology and historic preservation.

19 I worked in Hawaii for a number of years. I worked as
20 the project archeologist for Hawaii Volcanos National Park, and
21 then I moved out east, eventually started working for the
22 Government and first worked for Federal Highways. Now I'm
23 working for the Board.

24 And my role here is ensure that the provisions of the
25 P.A. and the MOA, which are basically the two conditions under

1 the cultural resources aspect of the EIS, 106, 107, make sure
2 those provisions are implemented and to work with all of you to
3 develop some sort of consensus agreement.

4 We've come up with a plan today, and this plan is a
5 draft. I don't want any of you to think that this is anything
6 that's set in stone. It's just something that we developed as
7 what I believe is a consensus document, but we're here to
8 discuss it and to change it and to amend it in ways that we may
9 need to.

10 So anyway I really appreciate you all being here.
11 Many of you have come from long distances, and it's great to see
12 this wonderful turnout.

13 MR. BIBLER: My name is Dave Bibler. I work with
14 Louis Berger Group. I'm the project manager for this project.
15 I work with Randy quite closely, and we work with STB.

16 MR. SHERIDAN: Hello. My name's Amen Sheridan. I'm
17 with the Omaha Tribe, tribal council member. And we're here to
18 help support and assist, you know, all tribes here in this
19 endeavor here as well as we want to uphold, you know, all
20 traditional cultural historical preservations. So I'll say
21 about that much.

22 MR. PROVOST: Tony Provost with the Omaha Tribe.

23 MR. ROBINETTE: Gary Robinette with the Ponca Tribe.
24 I'm the cultural resource director. I'm here to help as much as
25 I can in this process. I have to say I'm also here -- I'm

1 learning as I go. My background is in business and human
2 resource.

3 Kind of like a lot of tribes, I was thrown into the
4 cultural director position, and so every step of the way is a
5 learning process for me. Thank you.

6 MS. ROBINETTE: I'm Deb Robinette, Gary's wife, also a
7 tribal council member for Ponca Tribe in Nebraska. I'm here
8 learning, and he dragged me along.

9 MS. WHITE: I'm Joyce Whiting with Oglala Sioux Tribe,
10 Tribal Historic Preservation Officer. I'm here -- my
11 involvement would be the Section 106 and also to listen.

12 MS. SPOTTED EAGLE: I'm from Yankton. My name is
13 Faith Spotted Eagle. I wear a lot of hats, but I'm on the
14 cultural committee for Ihanktonwan, and I'm also the TCP
15 coordinator. And, in fact, we're out in the field right now.
16 So I came from the field where they're doing a TCP for a wind
17 farm at Wessington Springs.

18 And it's mindful of hearing the archaeological
19 qualifications of the people at the table. It's real
20 interesting to open that up to look at cultural properties from
21 our view because they gave us this map of 3,000 acres and said
22 it's all done, all the archaeological stuff is there. And we're
23 a third of the way through the project, and we've identified
24 29 sites. So there's -- potentially who knows what more is
25 there. So it's just --

1 Like Curley said, it's a national treasure at the
2 site. It is just an awesome, awesome site. And hopefully the
3 developers can look at it like Curley said, as a national
4 treasure.

5 Also we are here to -- my crew is out in the field and
6 everybody's tied up right now with the survey, but we're here to
7 advocate for the importance of that cultural treasure that we
8 have. I'm also a language person so my first priority is also
9 to translate many of these through the language because our
10 language holds a lot of secrets. So with those sites once they
11 go through the language they open up a whole different meaning.

12 So glad to be here and to represent the Ihanktonwan.
13 Thank you.

14 MR. ALLEN: My name is Sam Allen. I'm with the
15 Flandreau Santee Sioux Tribe. I'm the economic development
16 officer and acting THPO until we can get that position filled.

17 MR. FISHER: Good morning. My name is Conrad Fisher
18 from the Northern Cheyenne Tribe Tribal Historic Preservation
19 Office. I became involved in this three years ago and also as
20 being the THPO by default. And so this has been a wonderful
21 experience, not just being a THPO guy but also being involved in
22 projects such as this.

23 I guess one of the primary focuses that I have is to
24 be part of a team that I've been involved with and that is many
25 of the tribes here in ensuring that there's preservation efforts

1 that are being conducted and, you know, it's such a wonderful
2 experience to be able to sit around the table like this and
3 learn from many different people.

4 And also that this in my view is a -- sort of a pilot
5 project. I mean, this is something that I think we're all
6 learning from, not just from a cultural perspective but also
7 from a non-Indian perspective. So I hope that everybody listens
8 to each other and that we can come up with a mutual
9 understanding of what direction we want to go with this. I
10 hope.

11 MS. HALVERSON: Good morning. My name is
12 Pam Halverson. I'm from Lower Sioux, Morton, Minnesota.
13 Dawakton (phonetic). I'm the THPO officer for the past two
14 years, going on two years.

15 I'm here to support and to follow the 106 law and
16 protect my ancestors and sacred sites.

17 MS. WHITE: Good morning. My name is JoAnn White.
18 I'm from the Northern Arapaho THPO, and I'm here for the
19 Section 106 also.

20 MS. DESROSIERS: My name is Dianne Desrosiers. I'm
21 from the Sisseton-Wahpeton Oyate. I'm the Tribal Historic
22 Preservation Officer. I too am also here to ensure the 106
23 process is followed. Thank you.

24 MR. WHITTED: I'm Jim Whitted from the
25 Sisseton-Wahpeton Oyate Tribal Historic Preservation Office.

1 MR. RITCHIE: Good morning. I'm Ian Ritchie. I'm
2 with the Forest Service in Douglas, Wyoming, and I'm here
3 because the railroad's going to go through Buffalo Gap National
4 Grassland here in South Dakota and Thunder Basin National
5 Grassland in northeastern Wyoming.

6 MR. LITTLE GHOST: Good morning. My name is
7 William Ambrose Little Ghost. I am from the Cut Head Band of
8 Ft. Totten, North Dakota, Spirit Lake. I do attend all of these
9 meeting as much as possible, represent our tribe in which a lot
10 of times I've been given full permission to, you know, make
11 these decisions for our people.

12 And in order to -- getting back to the railroad, when
13 I was in the service I was discharged while I was coming home.
14 I got half ways home, and I shipped everything home. And I
15 jumped the freight there. For two years I was homeless, and I
16 rode the freight. Good transportation.

17 But nowadays, you know, that we have this particular
18 binding of us between two people or two governments. I think if
19 we can sit down and have respect for each other -- like I see a
20 lot of them that stood up and spoke. That's not to disrespect
21 all the people that are here, especially the non-Indians. I see
22 some that just sat.

23 I have started in this kind of work in 1962. I was
24 with Nebraska archeologists who were digging down at Mad Bear,
25 excavating the Reed Village, (phonetic) which had a lot of

1 artifacts at that time. When the army came along or the calvary
2 they found these people there. Instead of trying to go out and
3 make peace, they started shooting at them with their -- you
4 know, with a gun. So they were making holes in the houses. So
5 they came out with the truth, and they made peace. Tomorrow
6 they said we will come out and talk to you.

7 Knowing the people, the calvary, that night all of
8 them crossed the river across to relatives. The next morning
9 when the calvary came out and was going to negotiate there was
10 nobody there.

11 So what my theory is and my way, we better have trust
12 in you. Be truthful. Don't speak your mind because somebody
13 has told you to speak this way. I'm an elder. I have many
14 years' experience. And each one of you today watch your words.
15 That's why we never use a peace Bible within these kind of
16 meetings. The Peace Treaties that were made during Fort
17 Laramie, none of them were kept. Those are the kinds of things
18 that we think about, and we don't want to bring the pipe out.
19 So think.

20 Also my friends, non-Indians especially -- (speaks
21 different language).

22 MS. LITTLE GHOST: All my relatives who are sitting
23 among the wasichus, I'm really happy, and I'm just emotional
24 again. We're talking about our ancestors here. I feel for
25 them. I know they're looking at us right now. They're trying

1 to preserve our ancestral burial grounds. And I welcome
2 everybody. I just feel good to be here and listen to all what's
3 going to be coming about.

4 Ambrose and I, our life is limited on this earth. And
5 the young people who are getting educated on this archeology
6 railroad and whatever's going to happen, I'm glad you're getting
7 educated so they can carry on on what they learn to save our
8 ancestors' burial grounds and sacred sites.

9 (Speaks different language). Ambrose came with a
10 horseback, and he took me back to Spirit Lake. We're going on
11 49 years. February 8 will be 49th anniversary for us. And I
12 can remember 1965 Ambrose started archeology works with the
13 archeologists. So he knows a lot. If you have any questions,
14 you know, you can ask him.

15 I have 12 women songs, but I'm not going to sing any
16 of them today because I'll probably start crying. I'm just glad
17 to be here, glad to see everybody. Glad to see Tim. Ron has
18 comed out and Curley. I always tell them that I'm glad you're
19 here because I didn't finish the 12th grade. I went as far as
20 10th grade. And I can't talk like -- I can't talk myself out of
21 the hole like most of you guys do. That's how I feel. That's
22 my feelings. I'm glad to be here. I'm going to hand the mic
23 over to Mike.

24 MR. HIS HORSE IS THUNDER: Some of us talk our way
25 into those holes.

1 MR. MADSON: My name is Mike Madson. I'm very happy
2 to be here today to be a part of this process. I am an
3 archeologist by training. I am from Minnesota, grew up in
4 central Minnesota, St. Cloud area, and have a master's degree in
5 archeology from Michigan Tech University.

6 One of the things I learned when I was in graduate
7 school is that I know very little, and I've tried to take that
8 with me into my marriage, my father -- being a father, and also
9 into my work.

10 When I started working on this project about a year
11 and a half ago for Doug and for Randy we saw a lot of challenges
12 ahead of us. And we've tried to design a work program at DM&E
13 that deals with the archaeological issues, the archaeological
14 sites that are out there, and also the historic structures that
15 are out there. That's my main job is to make sure that there is
16 a work program in place and to identify people to complete the
17 work program.

18 I'm a consultant to DM&E. I want to make that clear.
19 I think there's always been a question about that. But that is
20 my role, and I will continue to serve in that role as long as
21 they'll have me. And I'm glad to be a part of this process to
22 see how the work plan that Cathy has put forward will help us
23 and help you be integrated into our program as well.

24 And we have an archaeological program that we have
25 ongoing, and there's lots of opportunities there. And I think

1 we're going to go through those today as well as others. So
2 thank you for having me. And I'm going to pass the mic over
3 here to Alan.

4 MR. STANFILL: My name is Alan Stanfill. I'm senior
5 cultural resource compliance manager with HDR. Some of you may
6 recognize me for my years at the Advisory Council On Historic
7 Preservation. When the Advisory Council closed down in the
8 Denver office I retired from the Federal Government, and HDR was
9 kind enough to offer me a position on this project.

10 My role is sort of as a systems analyst. I work with
11 Mike and provide suggestions and advice for how to bring the
12 cultural resource program forward in a very consistent and
13 logical fashion and in a way that meets the requirements of the
14 Section 106 process, National Historic Preservation Act, and the
15 needs of all the consulting parties.

16 And that's what I'm here for today is to listen to
17 what people have to say and to try to transcribe their concerns
18 and their needs in a way that's built into the cultural resource
19 management program so that everybody can walk from the table
20 satisfied with having at least achieved everything they need.
21 Thank you.

22 MR. SPOTTED TAIL: My name is Charlie Spotted Tail. I
23 represent the Rosebud Sioux Tribe. I am also the director of
24 the tribes' elder treaty council. I became involved and stay
25 informed because of the treaty implications involved with this

1 project. And I'm happy to be here.

2 Thank you very much.

3 MS. SALISBURY: My name is Erin Salisbury. I'm an
4 archeologist with SWCA Environmental in Denver. I've been
5 involved in this project since the fall of 2006 working closely
6 with HDR and DM&E on Section 106, specifically with coordination
7 of archaeological field work and reporting.

8 MR. CROWS BREAST: Good morning. My name is
9 Elgin Crows Breast. I work with 3 Affiliated Tribes, THPO
10 Office, Cultural Preservation Office, NAGPRA representative,
11 used car salesman. I could just go on and on.

12 Good morning, everybody.

13 MR. CAMPBELL: Good morning. My name is
14 Robert Campbell from the Santee Sioux Nation here at the request
15 of my chairman to learn, grow, and participate. Thank you.

16 MR. KANGAS: Good morning. I'm Jim Kangas from the
17 Bureau of Reclamation Dakotas Area Rapid City Field Office. I'm
18 an archeologist, been attending these meetings since 1998. I
19 took a brief hiatus. My agency is a signatory to the cultural
20 resources Programmatic Agreement.

21 The railroad will be crossing some reclamation
22 irrigation facilities in Fall River County, and that's my
23 purpose for attending this meeting. Thank you, and nice seeing
24 you all.

25 MS. LAROM: Hi. My name Cindy Larom. I also work for

1 the Bureau of Reclamation here at the Rapid City Field Office
2 with James Kangas. So thank you.

3 MS. GLIDDEN: I was just thinking that maybe we should
4 take a break now. Sound good? Get to know each other now that
5 we know who we are. Like, I don't know, a 15-minute break.

6 (A short recess is taken)

7 MS. GLIDDEN: Again, I appreciate everybody being
8 here. We want to -- we're kind of behind schedule as you may
9 note from the agenda. So what we're going to do is we're going
10 to combine the 9:30 to 10:15 items into the 10:30 to 12 p.m.
11 items. Because more critical than looking at the work plan is
12 making sure that we make it to lunch. So we want to make sure
13 that we end exactly at 12 o'clock.

14 So, anyway, just to go over the agenda, we want to
15 look at the work plan that we've developed, defining the purpose
16 and need, the identification of traditional cultural properties,
17 and how that would tie into the report reviews and field checks
18 and participation of tribes and the archaeological surveys that
19 are ongoing and that will continue, and the tribal study to
20 research traditional cultural values.

21 One of the things I guess I want to point out is I
22 think there's two key components. One is the identification of
23 the traditional cultural properties, which would be isolated
24 sites or perhaps clusters of sites that would be identified by
25 the tribes as sites that would be eligible for the National

1 Register under 106, and those sites are sites that we need to
2 identify as a federal agency in order to be able to treat them
3 and develop a treatment plan with the tribes.

4 And then we have a second part, which is this tribal
5 study, which would involve whatever -- I guess whatever the
6 tribes will want. We've come up with some suggestions about how
7 this -- what this would be, involve ethno-historic research,
8 archival research, working with elders. It could be any number
9 of things. We could build on the archaeological work that's
10 already been done, that the tribal members have done out in the
11 field.

12 And as I see at the first part, the identification of
13 the traditional cultural properties would be time dependant in
14 the sense that that would need to be done in a way that it would
15 work with a construction schedule, and it would be the sorts of
16 treatments that would occur in the field by tribal participants.

17 And then the tribal study could be something that
18 wouldn't be time dependant that could continue on. And then out
19 of that study -- the study itself would allow for a sense of the
20 values, the traditional values of the entire corridor. And out
21 of that would come perhaps alternative mitigation which might
22 include anything.

23 Some of the things that I think were brought up in the
24 MOA, including -- and some of the things that were brought up
25 today, to assist in economic development, including tribal jobs.

1 I think we have a couple of things noted here, but it could
2 really be just about anything. Popular publications, support
3 for tribally administrative oral history language, preservation
4 programs, the jobs program for Native Americans interested in
5 working for DM&E, perhaps support for scholarship funds for
6 Native American students interested in historic and cultural
7 preservation.

8 So the other part of it would be the construction
9 monitoring, which would specifically be activities that would
10 occur in the field during construction where there would be
11 tribal monitors out there observing and being there to see if
12 there's anything -- any unanticipated discoveries that might be
13 uncovered, including burial items, of course.

14 So, anyway, going through the plan if we could go
15 ahead and get to the Work Plan For Tribal Involvement, that's
16 the one from January 4, 2008, one of the things I tried to do
17 was work to use the plan that was developed by the tribes in the
18 October meeting as a boiler plate for this plan.

19 And I think you probably all have copies of the plan
20 that was developed in October. It says Tribal Involvement
21 October 9 through 11. So that's the plan that was originally
22 proposed at the October meeting. And so what I've -- I've tried
23 to do is to work with the -- with the railroad and to consider
24 our needs in terms of our regulatory requirements and to combine
25 what I thought was a consensus document.

1 Now, again, this is a draft. This is a draft. This
2 is something that, you know, I put together primarily with
3 assistance from, you know, our consultants. But it's a draft.
4 It's a draft. And so, you know, it's open to discussion. It's
5 just something that I developed that I thought was a way of
6 getting out what we all want.

7 In terms of what we need as the STB as the lead
8 federal agency is we have to make sure that we comply with the
9 Programmatic Agreement that was developed for this project and
10 to make sure that we fulfill the requirements of Section 106, of
11 the National Historic Preservation Act, and that we make sure
12 that we involve tribes in pretty much every stage of that
13 process.

14 And on page -- let's see. We have a B, Regulatory
15 Requirements. On that page if I could just walk you through
16 some of the things that we are required to do in terms of tribal
17 involvement, first is the identification of historic properties
18 that might be eligible for inclusion in the National Register,
19 including properties of traditional and religious importance to
20 tribes.

21 So this can get tricky because some of the
22 archaeological sites that are eligible as archaeological sites
23 under perhaps criterion D for informational potential could also
24 be traditional cultural properties. So any treatment plan that
25 we develop for archaeological sites has to be combined with

1 with -- or has to be mindful of tribal concerns about those
2 sites and the fact that some of those archaeological sites could
3 be TCPs.

4 And then we have to look at the assessment of the
5 project's effect on those properties that you have identified as
6 being traditional cultural properties.

7 Let's see. A lot of this is just, you know, pretty
8 much the different phases of the 106 process. But I think -- I
9 think the main thing is we want to make sure that we have
10 developed a process -- that we develop a process where we can
11 build upon the work that's already been done so that there isn't
12 any overlap but make sure that you are all involved in the
13 process of identifying properties that are important to you from
14 a traditional, religious, and cultural perspective.

15 So in terms of trying to do that, if you look under C,
16 this is the meat of what we are recommending that we do. In
17 terms of a process for combining the goals, we have under
18 identification of traditional cultural properties, the
19 recommendation that we begin with, as Curley had mentioned in
20 the October meeting and as is stated in the tribal involvement
21 plan that was developed by the tribes at the October 9 meeting,
22 that we start with the reports that have already been developed.
23 There's an awful lot of data out there.

24 I think that Mike Madson probably can speak to just
25 the number of reports that have been developed. But it's

1 considerable up to this point. And so there's a lot of data
2 there. And a lot of the information that was requested be
3 collected in the tribal involvement plan developed by the tribes
4 October 9 has already been completed, things such as
5 photography, you know, background research, just a lot of the --
6 a lot of the basic steps have already been completed. So we
7 want to make sure that we build upon what's already been done
8 and again not have any overlap.

9 So, again, starting with the review of the reports for
10 the tribes. And so we have about kind of a three-step process
11 that would -- we thought would work in terms of assisting you
12 with identifying sites out in the field. That we begin with a
13 review of the reports, the archaeological reports that have
14 already been completed.

15 And I know a lot of you have already received copies
16 of these reports. But what we will be doing is when we send
17 them out we will begin the clock again, the 30-day clock. So
18 you would receive the report and then -- or if you have the
19 report already, we could decide on a time when that 30-day clock
20 would begin, and then you would provide us with your comments
21 regarding the sites that are listed in the report and provide us
22 with information about whether or not you think those sites are
23 eligible as TCPs. That would be the first step.

24 Now understanding that you may not be able to rely
25 alone on the reports in every case. We have the process

1 outlined as B, which is a process for report reviews with field
2 checks. So in that particular case you'd have the 30-day review
3 period, and then you would go out in the field and look at those
4 sites more carefully to see if, in fact, they are or could be
5 traditional cultural properties.

6 And the way that DM&E has suggested that we go about
7 doing this is that we would provide you with an extra 30-day
8 period to actually go out in the field and look at those
9 specific sites that you need to further identify.

10 And then under C we have a process for tribes
11 literally actually being out in the field and participating in
12 ongoing archaeological field work to identify TCPs.

13 In addition to the identification of the traditional
14 cultural properties, which again is very much time constrained
15 because of the construction schedule that DM&E has, so it's
16 critical that we identify those traditional cultural properties
17 as specific sites as soon as possible, with your help, of
18 course.

19 And so we need to as a federal agency also determine
20 if those sites are eligible for the National Register. We need
21 to do all of that before we can even start thinking about
22 treatment plans. But that's something that we also need to talk
23 about as part of this session.

24 In addition to that, we've come up with this tribal
25 study, which I know is something that was also mentioned in the

1 original plan, a study that would be encompassing the entire
2 project area. And I would like to make an adjustment also to
3 the wording in the plan as it is under 2, Tribal Study.

4 It says here that, In addition to the analysis of
5 individual TCPs, this work plan provides for the completion of a
6 stand-alone study directed by STB in consultation with the
7 tribes. That should be changed. This should be a study that's
8 directed and contracted by the tribes. And so if you could
9 change that wording.

10 To assess the traditional cultural values of the
11 project areas. And I wrote that it's anticipated that the study
12 would rely on ethnographic studies, ethno-historic sources,
13 archival researches, interviews with tribal elders and others
14 with expert information, and survey data.

15 So this tribal study is something that I think could
16 be quite comprehensive and we would imagine would be
17 comprehensive and would fulfill the requirement in terms of
18 trying to get at I think what a lot of people -- a lot of the
19 tribes expressed were the values of the area, not looking at
20 these sites as individual sites but looking at the value of the
21 entire area in terms of its -- the heritage that you were
22 mentioning.

23 I think there was some wording about that earlier
24 today, the preserving natural heritage treasure, an area, you
25 know. So this study we would hope would address that specific

1 concern.

2 And in addition to that we have the tribal monitoring
3 during construction. And that -- the tribal monitoring would be
4 specific to the actual construction activities where you would
5 have tribes out there in the field during construction to
6 observe what's coming out of the ground, and if there's sites
7 that are identified, then the construction would stop. But that
8 would need to be worked out, a process specifically for dealing
9 with the tribal monitoring during construction. But that
10 specific section is simply for the construction phase of the
11 project.

12 And then again we have the treatment plans. The
13 treatment plans would come after we've actually identified the
14 National Register eligible sites, be they archaeological sites
15 that could be traditional cultural properties or just sites that
16 haven't been identified as archaeological sites but are
17 traditional cultural properties, and a treatment plan also to
18 address the effect of the project on the entire area.

19 So, you know, looking at it from the perspective of
20 the heritage treasure, you know, this whole place as being
21 something, you know, that's not just little pieces but a whole
22 area so that a treatment plan could be developed specific to
23 that as well. And it could involve anything. Treatments pretty
24 much involve anything. And I think it's just a question of
25 negotiating with everyone here, particularly with the railroad.

1 A lot of this would be voluntary type of mitigation.

2 They've already offered up certain types of
3 suggestions, as I mentioned earlier, which would be scholarship
4 fund, the jobs programs, economic development. But I know Herb
5 wanted to talk about that a little bit. And, I don't know, this
6 might be a good time, Herb, if you wanted to talk a little bit
7 about some of the treatments that you're thinking about.

8 MR. HERB JONES: I'm going to actually turn the mic
9 over to Randy and Doug a little bit on this front because I
10 think there's a couple of different aspects. And I guess for
11 convenience sake, just under this mitigation and compensation
12 area I think what we'd like to be able to do is discuss
13 mitigation compensation and some of the I think beneficial
14 aspects of the project and what it might mean to the tribal
15 community, things that have been discussed as some of you have
16 talked to me about the last 10 years.

17 A couple of people had mentioned this morning some of
18 the jobs aspects, for instance, of the project. There's also I
19 think -- there are other opportunities with, for instance, DM&E
20 or with the consultants that I think are worth at least touching
21 base on. And I just think there are a number of things that
22 would fall under that category of alternative mitigation.

23 And, Cathy, you touched on too people have suggested
24 things such as scholarship funds or other wetlands mitigation --
25 or wetlands access, something like that. Those are ideas

1 that -- I just want to tell you from a company perspective and
2 this is looking at it -- there are a number of ways to treat
3 resources, and there are a number of approaches to mitigation
4 compensation that probably make sense.

5 From where we're coming from the -- how those
6 resources are used is less important to us than that they
7 address the needs out there and address that impact. That's
8 what the bottom line is. So how the resources are used, whether
9 you use the resources in a heavy data retrieval aspect way of
10 doing it or whether you have those same resources that might go
11 someplace else, the important thing to us is that the impacts be
12 addressed in some way, shape, or form and that it be something
13 that I think STB believes is an appropriate way of doing that.

14 There probably will be a lot of different thoughts
15 about what the best perhaps combination of approaches might be
16 for mitigation and compensation. But, again, Doug who's with
17 HDR and Randy who's with DM&E can kind of go over a little bit
18 on some of the things I think we might be looking at for
19 instance on the jobs front, some of the other construction
20 aspects of the project itself.

21 And there's one thing I just want to go back on you
22 just mentioned. And that is construction monitoring. It's a --
23 the term "monitoring" has kind of been beat around at these
24 meetings time and again. I just want to remind everybody when
25 the reporting is done -- when the reports are through, when the

1 reports are all done, when you've got the process concluded and
2 the report reviews and signed in, you're still not done. You
3 still have all of the construction monitoring to go. And
4 construction monitoring means you're going to have people in the
5 field doing construction monitoring, watching the activity
6 that's going on, ensuring that we're complying with things and
7 if we come across finds, unanticipated or otherwise, that
8 there's a means of addressing that with qualified people there
9 to do it.

10 But I just wanted to tell you that so as we look at
11 these -- sometimes people look at it and the conversation sounds
12 like we think your job is done when you get done with your
13 review or that's the end of any monitoring activity that there
14 might be. That isn't the case. You have construction
15 monitoring for the duration of the project. And this project
16 has -- Randy can tell you what it would take but approximately
17 three years of construction where we would have ongoing
18 construction monitoring.

19 But if you don't mind, I think Randy and Doug can
20 touch base a little more, give us a little more detail what that
21 might entail.

22 MS. GLIDDEN: I just want to point out of course when
23 it comes to treatments that's something that's in the future, of
24 course, because there's a lot of work that would have to be done
25 first in terms of identification to figure out what the adverse

1 effects are going to be and then determine appropriate
2 treatments.

3 But we thought we would bring this subject up just to
4 give you an idea of some of the things that DM&E has been
5 thinking about in terms of overall compensation package, if you
6 will, to address the overall adverse effect of this project,
7 which we know are going to be considerable to cultural resources
8 and traditional cultural properties.

9 So, anyway, with that --

10 MR. HENKE: As Herb said, the construction plan is
11 basically three full construction seasons. It may extend a
12 little bit beyond that. It all depends on when we can get
13 started, and it's a little bit up to the C.P. to decide when the
14 funding will be available. But for the purposes of this
15 discussion, I guess we should focus it on hopefully starting
16 sometime this fall and running through three full construction
17 seasons ending somewhere in December of 2011.

18 When we talk about construction monitoring I think
19 there's -- maybe we just explain a little bit. We are sitting
20 down in two weeks with -- we don't have a contractor in place
21 right now. We have a preferred contractor, and we're meeting
22 with them in two weeks to sit down and actually sit and talk
23 through a construction schedule. We have a rough schedule
24 that's based on what we think will work. We're going to sit
25 with them and work on a thorough construction schedule.

1 So sometime by early, midsummer, Doug, I think we'll
2 have a very good construction schedule, know exactly what we
3 think we'll need for monitoring going into the construction in
4 the fall.

5 And, again, I see construction monitoring as two
6 opportunities here. One is the -- there's the monitoring we've
7 talked about a lot here of the 106 and looking and seeing --
8 following a grading contest and seeing what might be on earth
9 when we go through a cut or fill a spot, to monitor that.

10 We also have a fairly large monitoring group that will
11 be monitoring the contractor. So it will be consultants or
12 somebody monitoring the actual work separate from the people
13 monitoring for the cultural resources.

14 My guess is in talking with the contractor -- and,
15 again, this is all going to be firmed up and defined. But right
16 now somewhere between six and 10 major grading efforts at any
17 time so there's at least -- whatever that number is there's at
18 least going to be a monitor of some sort with each of those
19 grading contractors to see as we're again moving earth and
20 changing the landscape to build a railroad bed some way to
21 follow that.

22 Well, also early in the process would be --

23 MR. CROWS BREAST: On your monitoring and construction
24 you're going to need a certain amount of -- the way I'm hearing
25 you, you're going to need a certain amount of groups, tribal

1 groups, and you're going to be doing certain projects throughout
2 the whole project? You'll have a number for us?

3 MR. HENKE: That's what I'm trying to talk through
4 here. There's intended right now to be between six and 10
5 grading sites. So, again, this is all hypothetical, but let's
6 try to talk about this.

7 The west yard, which is out near Wright, is going to
8 be a major base where they'll start work. So there will
9 probably be a grading crew working east and working west. At
10 Smithwick, which ties into our existing line and it's an
11 opportunity where we can get construction materials to the
12 contractor, there will again probably be a major site there
13 where we start work and then progress the work in two
14 directions.

15 And then the same thing up in the Wall area because
16 Wall has a lot of grading. In that first 15 miles there will
17 probably be a crew that starts somewhere near Wall because again
18 it's a place where we can get construction materials to the site
19 and they'll probably grade right out of Wall and they'll
20 probably grade starting somewhere in the Wasta area and running
21 the two crews together.

22 So they may start additional areas. That's why I say
23 somewhere between 6 and 10. We know there will be 6 sites when
24 we start, the contracting and grading starts. But what I was
25 going to say additionally at the same time we start the grading

1 they'll also start major bridge construction.

2 We have 68 bridges to build on this job, and my guess
3 is they'll start at least four or five of those simultaneously.
4 We've got three Cheyenne River crossings. We've got a major
5 crossing of Burlington Railroad and significant ones at -- we've
6 got the Angostura sites to deal with, one of which is a
7 (Inaudible) pipe so we'll probably start that work.

8 So, again, not knowing and not having worked this out
9 with a contractor but again I would guess somewhere between six
10 and 15 sites are going to get started relatively soon in the
11 process.

12 And that number will probably go a little like this.
13 Depending on the weather. Obviously if we've got weather like
14 this next winter, the grading contractor will want to work
15 straight through winter. If the ground freezes up, he'll have
16 to stop. So, again, once we sit down with the contractor, come
17 up with a work plan with him, we can define very clearly how
18 many monitors we're going to need to match his construction
19 schedule.

20 So I don't know the exact number, but it's a minimum
21 of six. Probably more like 10 to 15 when we're all said and
22 done would be my guess.

23 MR. CROWS BREAST: 10 to 15 groups?

24 MR. HENKE: Yeah. Different work sites where we are
25 all working simultaneously. To get this job done in three years

1 you've got to work in numerous spots simultaneously and work
2 towards each other in three or four or five spots to close the
3 construction and match the time schedule.

4 As I said, the other thing we'll be doing through that
5 process is obviously we have a lot of faith in the contractor
6 we've selected, but we don't trust him that much. So we will
7 have construction monitors out there to see that he's grading
8 the fills to what we said and we're compacting the ground to
9 what we said and we're following the best management practices
10 where we're crossing streams. So we'll have our own
11 construction monitors on top of the 106 monitors to see that the
12 contractor is following his work.

13 So, again, if there's six sites or 15 sites, we're
14 going to have somebody probably in each of those areas
15 monitoring that work. So whether we hire HDR or HDR hires
16 people, there's an opportunity for people through construction
17 to work there.

18 The other thing, we've talked at length with -- and
19 our contractor right now is proposed to be Flourames. That's
20 not a guarantee, but that's who we're working with most closely.
21 They estimate at the peak of work there will be 1,000 jobs
22 working on the project.

23 Obviously the contractor doesn't have 1,000 people
24 somewhere out in this area sitting ready to go to work. So they
25 will be looking for people to support all phases of their

1 operation. And when the time comes we will obviously try to put
2 people in contact with Flourames offices, people looking for
3 construction work.

4 I'm pretty sure Flourames will be more than happy to
5 hire anybody qualified. And, again, there will be all levels of
6 jobs from sophisticated crane operators to laborers to support
7 that. So there's a wide range of jobs that Flourames I believe
8 can bring to this project at least through the construction
9 phases.

10 And then the third element of that, and I think
11 Kevin's talked to several groups about this in the past, is for
12 us to operate this railroad -- and, again, it's not chisel and
13 granite yet, but our plan is to have a base of operations at
14 west yard, which is right -- it's right outside the -- will be
15 about 5 miles east of the Black Thunder Mine. We'll have a base
16 of operations out there.

17 And, again, our need for people, permanent jobs, is
18 based on how much business we get. So at startup we're
19 estimated to have about 50 jobs in the west yard. That could
20 grow to as high as 80 jobs as the business grows long-term out
21 at the west yard.

22 The other key significant spot, which is even -- is
23 larger than that is the Wall yard. We intend to use that as a
24 crew change point. So crews coming from east would change crews
25 there, and we're going to try to run as many crews as possible.

1 And it's all based on being able to hire people, to run west
2 towards Wright with the train.

3 So my estimate is somewhere in the range of 80 to 90
4 people at start and, again, depending on the level of business
5 that could easily grow to 150 permanent jobs just in the train
6 and engine side of this business.

7 So I think there's a pretty good opportunity on the
8 jobs front both short-term in a couple different ways,
9 construction or 106. And Mike or somebody else here at some
10 point will talk about helping to train or find a way to train
11 people to be available and qualified for this work. And then
12 there's an opportunity at some point for long-term job
13 possibilities, particularly with the DM&E.

14 I mean, we have a significant hiring need over the
15 next three and a half years. And obviously if we hire someone
16 that's a train or engine man, there's a significant training
17 program that goes with it. Our training program for an engineer
18 is a minimum of six months, and our training program for a
19 qualified conductor, which we do all in-house right now, is
20 about six weeks with some in-the-field training.

21 So anybody qualified that can -- again, you don't have
22 to be qualified. It has to be somebody that's willing to and
23 has the aptitude to want to become a train and engine employee.
24 And we do all our training in-house and significant training
25 programs that go with that for our permanent jobs.

1 So that's just some little overview, I think, of where
2 some of the opportunities would be as both part of the
3 construction and part of the permanent operation of this
4 railroad.

5 MS. GLIDDEN: Randy, you had mentioned that there's
6 lots of opportunities for jobs. And some of these sound like
7 skilled positions. You know, in terms of economic development,
8 I know that's something that was brought up a couple times by
9 the tribes, but would you be in a position to actually
10 memorialize job training for some of the tribes to take on some
11 of these complicated positions?

12 MR. HENKE: For the permanent jobs, absolutely because
13 we have our own in-house training on how we would do that. So
14 we would go about that process -- I can explain that very well.
15 Obviously we can work as a team and talk a little bit about the
16 106 training that might need to take place so people are
17 qualified to do the 106 monitoring. And, again, that's what we
18 can talk about.

19 And then I think I need to spend a little bit of time
20 with the contractor and understand exactly what he's willing to
21 do or what we can impart into a contract and have him do for the
22 temporary construction jobs. So I guess in honesty here, I
23 don't have a -- I can't put that to rest right now. I need to
24 sit and work with the contractor a little bit, develop something
25 that he can say then here are the qualifications or here's the

1 training that he would put forth as part of his contract to do
2 the work.

3 MS. GLIDDEN: Yeah. Because I know as part of the MOA
4 there is a stipulation in there about training opportunities for
5 the tribes. And I think that if there are opportunities for the
6 tribes to be directly involved in the work and both in
7 short-term work -- and I know the 106 obviously is stuff that's
8 definitely going to be done. But outside of that in terms of
9 long-term jobs and training for some of the tribal participants,
10 you know, if that's a possibility as well.

11 I mean, obviously 106 is something that's definitely
12 going to happen. It's happening, and that's what we're talking
13 about here. But as far as those other types of jobs, working
14 directly for the railroad and that sort of thing.

15 MR. HERB JONES: Again, those are things I think we
16 will certainly work on and work with you on. I just want to
17 make sure -- Kevin I think at the Pierre meeting also talked
18 about those opportunities and suggested that -- Kevin Schieffer,
19 our president and CEO, was at the meeting in Pierre earlier --
20 or in 2007. And one of the things he talked about was the
21 opportunity for even in those temporary jobs to develop so that
22 those types of things can be transitioned into permanent jobs
23 later.

24 Again, that's going to be performance based. People,
25 you know, doing their jobs well and all of those things. But

1 there will be we anticipate very good opportunities out there
2 and that those temporary type jobs might be a good place to
3 demonstrate the capability to perform and then transition into
4 permanent jobs.

5 I think that's really good. The one other thing I
6 wanted to say, we've got this category that we're looking at
7 here which is the mitigation and compensation and on-the-job
8 discussion. And that's fine.

9 The one thing I would like to kind of remind people of
10 is the actual mitigation and compensation and whatever we end up
11 with in the end will only be done once we get through the
12 identification process. We have to be able to go through and
13 know what the mitigation compensation is for, and the only way
14 to do that is to conclude the identification process.

15 And I hope that we can really come to an understanding
16 about that process so that timing of all of this makes sense.
17 We have adequate time to work through all of these things today.
18 We aren't going to start construction in March of this year.
19 We've got time to make sure it's done right.

20 And I really think that if we go through that
21 process -- and my hope is that I know you've got on the schedule
22 here for caucusing this afternoon, that if we can make sure that
23 that process is clear to folks and everybody has ample
24 opportunity again to offer thoughts on it, that we can go
25 through that process and make sure that that's very clearly

1 understood, the sequencing of it, the timing of it for reports,
2 et cetera.

3 Because that gets us to these things where we can have
4 real dialogues about mitigation compensation. Once we know what
5 we're impacting and what the impact will be then we can discuss
6 in reality -- we can get to the mitigation and compensation
7 aspect.

8 MS. GLIDDEN: We've got a couple of questions here
9 first.

10 MR. PROVOST: Tony Provost with the Omaha Tribe. My
11 question is, yeah, jobs is very good for our poverty stricken
12 reservations. However, you know, when you were talking about
13 the aspects of jobs being created for site monitoring for tribal
14 folk, now who would that in turn -- that tribal site monitor
15 would be an employee of I'm assuming you guys; right?

16 So what happens if that tribal employee or that site
17 monitor has an argument with your supervisor on the job site
18 over some Section 106 stuff? Now being an employee of you guys
19 then all the sudden you're terminated, and the process
20 continues.

21 MS. GLIDDEN: I think part of the issue here is I
22 probably should have gone through the entire agenda because we
23 do actually have a section on dispute resolution that would
24 specifically address that. We were anticipating having a task
25 force developed that would consist of the Surface Transportation

1 Board and then DM&E tribal liaison and three tribal
2 representatives, one of which would be definitely a Sioux
3 representative to deal specifically with these sorts of issues.

4 And it would be a basic structure to deal with any
5 kinds of issues that come up in the field so that they could get
6 dealt with very quickly, immediately pretty much so that you --

7 Let's say you were out in the field and you had a
8 problem with something -- like I know there was some issues with
9 the performance of smudging ceremonies. That there would be a
10 process that the grievance committee would be able to address
11 this right away so that there wouldn't be any arguments in the
12 field. It would be something, okay, I have this issue, and then
13 it will be dealt with. So hopefully that answers your
14 questions.

15 MR. MENTZ: Could we get a response -- could we get a
16 quick response, though? I think that's very important that it's
17 for the record what he responds to. We can still address it.

18 MS. GLIDDEN: You want him to respond to that?

19 MR. MENTZ: No. I want a response to his question. I
20 also would like to know what the answer would be to that.

21 MS. GLIDDEN: I thought I just responded to the
22 question.

23 MR. MENTZ: I want this individual -- he asked him a
24 question.

25 MR. JACKSON: Randy and I both were I guess going to

1 answer this question -- excuse me. Randy and I could both
2 address this question. As far as the construction goes and
3 having construction monitors, you're correct. I mean, the P.A.
4 I believe actually differentiated, you know, the tribal work
5 that's being done now and they're working directly as a result
6 or through the Louis Berger Group and the STB but when it came
7 to construction I believe they actually gave that authority or
8 pushed that responsibility somewhat to the applicant, which, you
9 know, HDR is representing DM&E in the field. We plan to have
10 construction people out there.

11 To answer the question, I mean, it's no different than
12 our work planning today. Randy and I have responsibility for
13 getting the engineering figured out and for getting the work
14 plan figured out and working with the contractor. But to the
15 extent that that work plan has to be limited by the process
16 that's been dictated by the P.A. and is required through
17 Section 106, I cannot go out today and tell Mike Madson, you
18 know, I don't really care what site is represented here, I don't
19 really care what your schedule is for mitigation or what the
20 plan is to get that process determined eligible or not.

21 I still have to work through the Section 106 process.
22 I've got to rely on guidance from Mike Madson and the other
23 archeologists. And at this point with the process that was set
24 in place I still have to rely on guidance from tribes on making
25 that final determination as to eligibility and then what happens

1 to a particular site.

2 That's applicable as well in construction. If you
3 look at the P.A. right now, it's very specific as to what
4 effects -- what has to happen on construction operations if we
5 encounter cultural resources, or we have questionable areas that
6 we're getting into, there's requirements that we shut down the
7 work with, you know, a specified distance and that we go through
8 a process of getting a disposition in the field before we
9 continue to work.

10 So with respect to having tribal monitors there,
11 they're going to be a part of a cultural resources team that's
12 there working with archeologists, and there will be a hierarchy
13 set up to allow that decision making to be made. And, you know,
14 we expect that there would be -- I don't want to say arguments,
15 but there would be differing viewpoints on, you know, being
16 able to work in certain situations versus being able to have to
17 stop.

18 But to be honest with you, in construction -- in
19 general in today's construction industry on heavy highway or
20 heavy civil projects it's no different than requirements we get
21 into on wetland mitigation or even erosion control issues that
22 we run into in the field. We have governing provisions that
23 control the way we do our work both from the state and federal
24 level, and they affect how we conduct our construction
25 operation.

1 So in this case the argument would be worked out to
2 satisfaction to make sure that we're in good standing with the
3 STB and the requirements they've given us. And I wouldn't
4 expect, you know, at all for anybody to be fought over or make
5 an argument as to a particular work area.

6 MR. BIBLER: Let me clarify something. There are two
7 types of contracts. There are the construction monitoring
8 contracts and the 106 contracts. We'll go over that, the 106
9 contracts, this afternoon in great detail.

10 The 106 contracts, the funding mechanism is through
11 Louis Berger. It wasn't set up to that way originally, and we
12 had some problems with it, but it didn't look appropriate to
13 have 106 tribal representatives being paid directly by the
14 railroad. So they split that out. I hope that kind of answers
15 your question a little bit, Tony.

16 MS. GLIDDEN: One other thing is I should probably
17 explain the relationship between the Surface Transportation
18 Board and Louis Berger. And I know that that came up in a
19 letter that Dianne Desrosiers -- if I said that correctly.

20 MS. DESROSIERS: That's close.

21 MS. GLIDDEN: Thanks. Sorry. Anyway had sent to the
22 Board regarding what precisely what the relationship is. And I
23 think that's a great letter because it provided us with the
24 opportunity to sort of explain, you know, what Berger's role is.
25 Because I know that there's probably some question as to why,

1 you know, if Louis Berger's working for us why are they getting
2 paid by the railroad?

3 But basically how this works is we have our
4 third-party contracting relationship. And so Berger has signed
5 an MOU with us and the railroad specifying their role in this
6 project and specifying what they are to do and that they work
7 literally under the direction and control of the STB. They do
8 not work for the railroad. They work for us.

9 They are paid by the railroad. The reason for that is
10 simply that we don't have a budget for that kind of thing. And
11 so we in addition to the MOU, which is signed by the -- was
12 signed by Louis Berger and the railroad and us, there is also a
13 conflict of interest financial statement that they have to sign,
14 which we also have on record.

15 So just to make it clear, Louis Berger Groups is
16 basically us. They work for us. They work for the Surface
17 Transportation Board.

18 The HDR works directly for DM&E. And any other of the
19 consultants that you may hear about, SWCA, these other
20 consultants, they work directly under the direction of the
21 railroad.

22 But Louis Berger works directly for the Surface
23 Transportation Board, and they assist us in terms of reviewing
24 all the reports, going through pretty much everything that is
25 produced by DM&E and their consultants and ensuring that it

1 meets our requirements.

2 So just to be clear, if there's any questions
3 whatsoever about that, please let me know. But Louis Berger is
4 not the STB, but they are consultants that work for us. So
5 anyway.

6 Curley, did you have a question?

7 MR. YOUPEE: Yeah. I did. Let me just comment on
8 what you just said. Louis Berger works for you. They are not
9 Office of Surface Transportation, but they work for you?

10 MS. GLIDDEN: Right.

11 MR. YOUPEE: Okay. They work on behalf of your office
12 because you don't have a budget?

13 MS. GLIDDEN: Exactly.

14 MR. YOUPEE: You just said that. Well, let me
15 continue.

16 MS. GLIDDEN: Can I respond to that?

17 MR. YOUPEE: I'm going to jump all over that. I'll be
18 nice.

19 MS. GLIDDEN: We basically have a -- you know, maybe I
20 misspoke, but, I mean, of course we have a budget. We're a very
21 small agency. However, we have 150 people working for us. We
22 actually came out of one of the largest agencies that ever
23 existed in the United States, which is the Interstate Commerce
24 Commission which originated late in the 1800s and part because
25 of concerns about the fact that the railroad had dominated too

1 much and had taken over in many respects.

2 And so there was this ICC that was created to address
3 concerns about the railroad having too much power and control.
4 Eventually this ICC was pretty much gutted. And so we are now
5 the Surface Transportation Board. And our primary role is to
6 ensure interstate commerce, that interstate commerce occurs
7 unhindered.

8 And, of course, one of the things that we need to do,
9 however, in ensuring that is to address environmental concerns
10 and tribal issues. As far as the budget issue is concerned is
11 simply that we could do the work -- the way our regulations work
12 is that we could do the work, but we simply have such a small
13 staff that we encourage the railroad to hire -- we encourage the
14 railroad to get third-party contractors in order to assist in
15 doing the work. And so that's kind of how it works.

16 MR. HIS HORSE IS THUNDER: In other words, you're
17 telling the railroad, look, we've only got limited staff, it's
18 going to take us 10 years to get this done unless you put
19 forward money too so that we can have consultants, contractors
20 to get the job done?

21 MS. GLIDDEN: Exactly.

22 MR. HIS HORSE IS THUNDER: Okay.

23 MR. YOUPEE: Well, I don't want to go too far on this,
24 but I think that Louis Berger apparently has some qualifications
25 in dealing with tribes and understanding of that trust

1 relationship between tribes and the Federal Government. There's
2 some -- at least some understanding there; right, Randy?

3 MR. HENKE: Well, how do we get to Louis Berger? We
4 put out a qualification. The STB looked at it, and generally we
5 picked who we thought was most qualified and knew this business.
6 That's how they ended up where they are.

7 MR. YOUPEE: In terms of 106? In terms of working
8 with tribes? In terms of what as far as your criteria?

9 MR. JACKSON: They had to be pre-qualified by the STB
10 to do the type of work. We chose three or four firms through a
11 pre-qualified list, go through a --

12 MR. YOUPEE: Pre-qualified like for what?

13 MR. JACKSON: Pre-qualified to do consultation or work
14 as a third-party contractor through the STB.

15 MS. GLIDDEN: We have a list of contractors, you know,
16 that we use, and Louis Berger is one of those contractors.

17 MR. YOUPEE: Okay. So they had worked with tribes
18 before this project, numerous tribes?

19 MS. GLIDDEN: Well, I think it's probably -- there
20 probably aren't very many consultants that have worked with this
21 number of tribes on this large of a project. I think that this
22 project is -- and I think that somebody had mentioned that it's
23 kind of a pilot project. I don't know. Conrad had mentioned
24 that.

25 This is unusual. It's an unusually large and

1 complicated project, and I don't think that there are many
2 consultants anywhere in the country -- I've worked with many
3 consultants myself -- that have worked with this number of
4 degree of tribes.

5 So it's a learning process for all of us. It's a
6 learning process for me. It's a learning process for, you know,
7 a lot of us.

8 MR. YOUPEE: Okay. Getting back to what I've heard
9 over here regarding jobs, job opportunities, and hopefully those
10 are full-time permanent job opportunities, we're looking at the
11 future for opportunities as well. But and I heard you say that
12 can we memorialize these opportunities. And we're hearing not
13 at this moment.

14 But I would like to see some type of initiative with
15 the Louis Berger or with the DM&E to initiate some type of
16 package, employment package, employment opportunity package
17 instead of the tribes continuing to stimulate this in mitigation
18 and compensation talks.

19 Why do we have to continue to lose sites in order to
20 gain opportunity when everyone else is benefiting from this
21 railroad?

22 We're looking at states that are benefiting. You
23 know, we're looking at progress here, industry progress,
24 economic progress, and yet the tribes, you know, we have to
25 stimulate this with the loss of properties that are important to

1 us.

2 MS. GLIDDEN: Thank you. Scott.

3 MR. SCOTT JONES: Thank you. I was late. I
4 apologize. I really only came back in to tell you it's almost
5 lunchtime. No.

6 MS. GLIDDEN: Now wait a minute. I've got my watch
7 right here.

8 MR. SCOTT JONES: I'm on central time. Anyway, a
9 couple of things that may be just not minor -- I mean, may be
10 minor, and then I want to come back to see if I can follow up a
11 little bit on what Curley said.

12 I'm looking through the documents, the P.A. and the
13 MOA, and I'm -- the signature pages are not complete. Lower
14 Brule Sioux Tribe signed both of these documents. And in the
15 P.A. it's blank. And the reason I bring it up is in reading
16 this there's things like affected tribes referred to, and then
17 there's things like appropriate tribal representatives referred
18 to.

19 And if the nexus between being appropriate or being
20 affected is your signature on these documents, then I think we
21 need to get the signature issue worked out.

22 Whether that means -- because I know that we've signed
23 them. Now on the MOA I've had this discussion with Randy,
24 Mr. Withrow, before. And none of us can find a signed copy of
25 the MOA. But I know for a fact my tribe did a resolution, and

1 my chairman signed an MOA before we signed the P.A. And I know
2 for a fact a tribe in Oklahoma also signed the MOA before the
3 P.A.

4 And I'm hoping I'm not wrong on that. But I had
5 found Lower Brule listed, and it doesn't have my chairman's
6 signature. And Lower Brule Sioux Tribe on page 20 of 27,
7 Appendix D, page 15 has Lower Brule Sioux Tribe, and there's no
8 signature. Now maybe you're just going to tell me, oh, that's
9 because that copy was --

10 MR. WITHROW: That's exactly what I'm going to tell
11 you.

12 MR. SCOTT JONES: That's fine, but for the purposes of
13 a court reported meeting, that's not fine. Because the term
14 affected tribe, appropriate tribal representative, and other
15 references I believe hinge on being a signatory in some cases to
16 these agreements. And if it doesn't hinge upon that, we need to
17 clarify what it hinges upon.

18 And I know that that may be creating a side argument
19 here but go ahead, Cathy, and then I'm going to move on to
20 something else.

21 MS. GLIDDEN: Well, there is a signed page -- as I
22 understand it, and, of course, I've recently been involved in
23 this project, but Lower Brule signed at a later date so that
24 signature page was actually added at a later date and that's why
25 it's not a part of the original set of signatures.

1 MR. SCOTT JONES: And I'm going to tell you why. And
2 Vickie Rutson (phonetic) may disagree because we submitted the
3 signature, and it got lost somewhere.

4 MS. GLIDDEN: Could very well have been.

5 MR. SCOTT JONES: And I'm back to the MOA, which is
6 going to be the basis of some of our discussions of
7 nonmonitoring job development --

8 MS. GLIDDEN: Scott, I think that one of the things we
9 could do is actually go through the MOA. Would that be a good
10 idea?

11 MR. SCOTT JONES: Right now?

12 MS. GLIDDEN: Right now.

13 MR. SCOTT JONES: Sure. And let me just say this. As
14 far as I know, only two tribes signed it.

15 MS. GLIDDEN: The MOA?

16 MR. SCOTT JONES: Uh-huh. And so I'm just going to
17 suggest that you recirculate that document.

18 MS. GLIDDEN: Recirculate for signature?

19 MR. SCOTT JONES: For signature so that we can get
20 everybody that has objected to the railroad or whatever for
21 whatever reason -- you know, my tribe respectfully opposed the
22 railroad for a lot of cultural and environmental reasons that we
23 can get on-line those tribes that are now willing to sign the
24 MOA.

25 And I'm willing to jump to the MOA because number

1 13 --

2 MS. GLIDDEN: Does everyone have a copy of the MOA
3 that they can turn to? Everybody know what that document is?
4 It's not the P.A. It's a separate document. There's copies on
5 the table if people don't have copies.

6 One of the things -- in my opinion, I think that the
7 MOA, because it's a condition, you know, in my mind that's
8 something that we have to comply with, whether or not there's a
9 signed copy or not.

10 MR. SCOTT JONES: Except that the MOA itself refers to
11 signature. Specifically that if you're not a signatory to this
12 document -- and I helped architect it as well as Curley, and
13 there was input from others.

14 There was a reason we put in here -- provision
15 number 1 under stipulation states, The provision of this MOA
16 that expressly addresses the rights and duties and obligation of
17 and to signatory tribes shall not be binding upon or enforceable
18 by an entity not a party to this agreement.

19 And whatever it says in the FEIS, I believe that this
20 is the overriding statement in the relationship of us being able
21 to realize those things outlined in the MOA or not being able to
22 realize them.

23 And I think that the signing of these documents needs
24 to be concluded. And I don't want to eat up a bunch of time.

25 MS. GLIDDEN: No. I think it's an important point.

1 MR. SCOTT JONES: Because I'd rather get to the meat
2 of we should be able to access. And I'm confused -- if we can
3 jump ahead, since you've conceded we need to get the signatories
4 down or people can refuse to sign it. And once they've refused
5 to sign it they cannot -- and there's a big reason.

6 If you refuse to sign the MOA, you can't come in and
7 object to the MOA amongst those that signed it. At the same
8 time being a signatory to this MOA does not preclude you from
9 signing your own tribe's agreement with the railroad.

10 MS. GLIDDEN: Right.

11 MR. SCOTT JONES: So in the instance of one of the
12 tribes being able to develop an employment agreement separate
13 from everybody else, this MOA does not preclude that from
14 happening.

15 MS. GLIDDEN: Okay. Melissa, can you add that -- the
16 MOA issue, can you add that up there to our bulletin board
17 there?

18 MS. LUNDBERG: Yep.

19 MS. GLIDDEN: Thank you. And also an economic
20 development packet.

21 MR. SCOTT JONES: I would like to --

22 MR. YOUPEE: Economic development stimulus.

23 MS. GLIDDEN: Economic development stimulus. Okay.

24 MR. SCOTT JONES: I would like to ask just for
25 clarification, what does mitigation and compensation mean? What

1 is compensation relating to here?

2 MS. GLIDDEN: Can you tell me what you're referring to
3 specifically?

4 MR. SCOTT JONES: The agenda.

5 MS. GLIDDEN: Okay. As we were looking through this,
6 you know, this plan, this treatment plan, one of the things I
7 think that we were looking at was that we obviously once we've
8 identified the traditional cultural properties that we have to
9 look at treatments. We have to develop treatment plans, and
10 that's part of the 106 process.

11 So as part of that treatment plan we would develop
12 some potential mitigation measures. And so in my mind we would
13 have, let's say, mitigation or treatments that would deal
14 specifically with properties that have been identified in the
15 field with TCPs, and that would be obviously developed by the
16 tribes, whatever those treatments would be.

17 MR. SCOTT JONES: Okay. And the compensation is the
18 discussion we have yet to have on what would frame appropriate
19 compensation.

20 MS. GLIDDEN: Exactly.

21 MR. SCOTT JONES: All right. Moving on. I get it.
22 Number 13 under the MOA on page 6 says, DM&E and the signatory
23 tribes will work together to develop an active recruitment and
24 training program for the employment of Indian people of the
25 signatory tribes outside the monitoring program in carrying out

1 construction activities in the building of the railroad in the
2 event the appropriate agencies permit a route to be constructed.
3 In the event DM&E obtains this authority to construct a rail
4 line, the DM&E will identify and recruit qualified personnel
5 from the signatory tribes for long-term employment and contract
6 opportunities for qualified American-Indian contractors.

7 There's two pieces to that. One is the active
8 recruitment and training for the employment of Indian people.
9 And when we wrote it, correct me if I'm wrong, Curley, what we
10 had envisioned was the first step being that there would be a
11 recruitment and training program that would get our people ready
12 to step up to the plate for the second piece of that, which is
13 to become qualified personnel for long-term employment and
14 contract opportunity as American-Indian contractors.

15 That section -- and I -- at the time I really relied
16 on Curley who has extensive TERO, Tribal Employment Rights
17 Office, experience. That really needs to be fleshed out
18 somehow. Now there's a lot of other things that need to be
19 fleshed out, and we can go through all of them. And I hope we
20 do.

21 But we were talking about employment, and I just
22 wanted to make sure that when we're talking about employment as
23 a monitor on the ground or as a construction monitor that's
24 monitoring how construction's going that we weren't going to get
25 confused with this whole other notion of employment which means

1 that the railroad is going to actively talk to tribal
2 governments, tribal representation, actively develop training
3 and recruitment programs, identifying jobs available, entry
4 level, mid-level, high-level, et cetera, and actively help our
5 people -- the poorest places in the country, by the way, active
6 help our people get ready to become qualified personnel for
7 long-term employment and contract opportunities.

8 So that's a point that I didn't want it to get
9 confused with the whole other employment opportunities of
10 monitoring out in the field --

11 MS. GLIDDEN: You're exactly right. They're entirely
12 different types of employment.

13 MR. SCOTT JONES: And I just want to make sure, Cathy?

14 MS. GLIDDEN: Yes.

15 MR. SCOTT JONES: I can call you Cathy?

16 MS. GLIDDEN: Of course. Please do.

17 MR. SCOTT JONES: I just want to make sure that that
18 doesn't get lost in the woodwork. Because we're talking about
19 the life of the railroad here. Employment opportunities for
20 over the life of the railroad for Indian people. And we're
21 talking about providing the chance for our people to get
22 training.

23 In fact, at one time I asked Kevin Schieffer for a
24 trust account in the form of a million dollars to purchase a
25 van, vans that would help tribal people get to their place of

1 employment, would help tribal people get their tool belts, would
2 help them establish a training program. Now whether this ever
3 made it into the formal record or not, I have no idea. But,
4 again, we're talking about zero economic ability in some of our
5 tribal communities, zero economic abilities. No cash in the
6 pocket. No check in the mail. Only the money there, and in
7 some cases not even that to buy your family a meal, basic
8 necessities, basic, basic, basic necessities.

9 So at that point -- and when we talked about it -- of
10 course, Kevin's very smart. He never committed totally. But he
11 liked the idea. I remember he said that. That's a good idea he
12 said, but he never committed to it. So anyway I'm not going to
13 belabor it because I know we have a lot of other things to go
14 through in the MOA.

15 But for me the real proof of the -- the second half of
16 the proof of the other side of the cultural preservation and
17 engaging us meaningfully is employment, recruitment, training,
18 and job opportunities for Indian people.

19 Thanks.

20 MS. GLIDDEN: Melissa, can you add that to the board
21 right now? Just go ahead and write that up. Maybe right
22 underneath the other one in big blocks because that's clearly an
23 issue. Jobs. Jobs.

24 MR. SCOTT JONES: And contracts for American-Indian
25 contractors.

1 MS. GLIDDEN: Okay. Jobs and contracts for Native --
2 American-Indian contractors; correct? All right.

3 Oh, yeah. The signature for the local Sioux Tribe,
4 the P.A. signature is added as Appendix C. And it is there
5 dated 6-9-05 and signed by Michael Jandreau?

6 MR. SCOTT JONES: We have to do another resolution and
7 sign it again.

8 MS. GLIDDEN: Yeah. We didn't -- I don't know why
9 exactly, but you're correct. There were not very many tribes
10 that signed on. In fact, you're the only tribe right now who
11 has participated -- of the signatories that has participated in
12 this set of meetings. So having you here is really --

13 MR. SCOTT JONES: Can you say that again?

14 MS. GLIDDEN: You're the only tribal signatory -- the
15 only tribe basically that's -- who has signed this Programmatic
16 Agreement that has attended these meetings.

17 MR. SCOTT JONES: You mean this meeting?

18 MS. GLIDDEN: Any of the meetings since we initiated
19 this process. We had -- the other signatories were -- the
20 Pawnee Nation of Winnebago, Tribe of Nebraska, and what was the
21 other one? The -- wait a minute. There was one other. There
22 were three.

23 MS. HALVERSON: Lower Sioux never signed.

24 MS. GLIDDEN: Okay. The Pawnee Nation of Oklahoma and
25 the Winnebago Tribe of Nebraska.

1 MR. SCOTT JONES: And then Lower Brule.

2 MS. GLIDDEN: Yeah.

3 MR. SCOTT JONES: I think that that's really important
4 that that -- the nexus of this discussion kind of hinges on how
5 you're interfacing with the tribes, and that is -- granted, it's
6 in the FEIS, it's in the record of decision, blah-blah-blah,
7 but, I mean, you -- this is what was worked out as how we
8 interface on these issues. And you don't have all the
9 signatures. So -- already agreed you're going to --

10 MR. SCOTT JONES: I think it's important -- again,
11 there are references to affected tribes and appropriate tribal
12 representatives, and let me look at the definitions here.

13 MS. GLIDDEN: Okay. Scott, if I could -- just on the
14 interest of --

15 MR. SCOTT JONES: Time?

16 MS. GLIDDEN: And I know this is an important point,
17 but can we go ahead and agree to discuss this in some detail
18 tomorrow during the discussion period? Because there will be
19 plenty of time for that.

20 MR. SCOTT JONES: Yes. Or I'll look at the
21 definitions and come back and in brief form address it on the
22 record for you.

23 MS. GLIDDEN: Just look at the agenda. We do have an
24 opportunity tomorrow to have an open discussion which would be
25 between 9 and 12 and in which we can talk about any kinds of

1 issues, concerns we may have about this work plan, including the
2 P.A. issue.

3 Who has a question?

4 MR. EAGLE BEAR: Yeah. I guess I just wanted to quick
5 comment. Scott brought up a point about signatory and the
6 authority that they have.

7 From what I'm hearing is, you know, if any tribes that
8 didn't sign, they can't come back after the fact and object to
9 this MOA. Now I don't know how you're going to hold this from
10 this day forward. Are you going to expect a consensus from all
11 the tribes' signature on this MOA? Or are you going to go with
12 one or two tribes that signed and you're going to work with
13 them?

14 And if we come as a nonsignatory, then where do we
15 play? What role do we play? I guess if this is going to be
16 discussed tomorrow, that's fine too. But it was an issue that
17 was brought up. It created a question for me. And I want
18 clarification.

19 MS. GLIDDEN: Melissa, can you make a note of that so
20 we can address that tomorrow?

21 MS. LUNDBERG: Yep.

22 MS. GLIDDEN: Thank you. I just want to go through
23 the rest of the agenda and the rest of the work plan so we can
24 get through that. And then we're going to go ahead and take a
25 break for lunch.

1 We also have a process for project training which we
2 think is really critical so that prior to initiation of the
3 field work we would host -- the board would host a number of
4 training sessions.

5 MR. EAGLE BEAR: Excuse me. I have another question.
6 I know you're going -- I kind of came back in the meeting late,
7 but I'm assuming you're going through the Work Plan For Tribal
8 Involvement right now?

9 MS. GLIDDEN: I'm sorry. Yes. Let's get back to the
10 Work Plan For Tribal Involvement and page 5.

11 MR. EAGLE BEAR: Okay. And I have a question, and I'm
12 assuming that you've already -- you have discussed the treatment
13 plan. And maybe the question was already asked.

14 Going back to the mitigation measures such as tribal
15 ceremonies for those sites that cannot be avoided should be
16 conducted in a phase approached to meet the project construction
17 schedule. And then it kind of outlines the treatments to
18 address adverse effects to sites that cannot be avoided could
19 include but would not be limited to. And I think this is where
20 jobs were mentioned.

21 Could you clarify this now?

22 MS. GLIDDEN: As far as the types of treatment plans?

23 MR. EAGLE BEAR: Well, going back to sites that can
24 not be avoided.

25 MS. GLIDDEN: Well, we have a -- and, of course, the

1 engineers can talk more specifically to this, but we have a
2 route right now that's been laid out through the NEPA process
3 basically, and there are a number of other alternatives were
4 looked at. And the route was moved in certain cases based on
5 input from tribes to address sites that are significant.

6 But obviously some sites are not going to be -- we're
7 not going to be able to avoid them. And so there may be TCPs in
8 the way of where the railroad's going to be constructed. And so
9 obviously that's going to be an adverse effect on those sites.
10 And so the treatment plan would address how those sites would
11 be -- you know, would be treated. And that would be up to the
12 tribes.

13 I mean, obviously archeologists like to dig up sites,
14 you know. They like to do data recovery. And that's one
15 option. But there might be other options like performing
16 ceremonies or -- I don't know. It could be anything. And we
17 were just throwing out some ideas here, but it would really be
18 up -- I think up to the tribes to decide, you know, precisely
19 how those sites would be treated.

20 MR. EAGLE BEAR: Okay. I guess -- again, Scott
21 brought up a good issue that it's in the MOA. But then now if
22 we can't -- a site that cannot be avoided in the work plan is --
23 basically it looks to me that you're going to use that as a
24 payment for error in creating jobs or support for scholarship or
25 support for a tribal administrator, oral history or language

1 preservation program. I mean, it's like we're -- their going to
2 pay for something that -- a mistake was made so they're going to
3 pay for it.

4 MS. GLIDDEN: Mistake was made?

5 MR. EAGLE BEAR: I don't know. Maybe I'm losing --
6 maybe I'm kind of lost here but sites that cannot be avoided.

7 MS. GLIDDEN: Well, I mean, Herb, do you want to talk
8 to that from an engineering perspective, please.

9 MR. HERB JONES: Yeah. And I think I know where
10 you're coming from on that, Russell. And I think that was it.
11 The final route was approved. Obviously there will be impacts,
12 and there are a number of ways that you can deal with impacts.
13 But the idea is to where you can't --

14 I mean, if the railroad's going to be someplace where
15 it requires the removal of something that was there before, then
16 you have to look at what you do to offset that somehow. And
17 there's a number of ways that you can look at that treatment.
18 It might be heavy on data retrieval, taking things out,
19 artifacts, whatever. That may not be the ultimate solution to
20 it.

21 But there will be unavoidable sites where the railroad
22 will go through. And there's got to be a decision made about
23 how best to deal with that.

24 I want to remind everybody that from Wall to eastern
25 Minnesota everything essentially is within our existing right of

1 way where the railroad operates its lines today. There's an
2 offset alignment between Pierre and Wall for areas. It's still
3 generally within the right of way that we have today. And then
4 from Pierre to eastern Minnesota you're within our existing
5 right of way again. Not entirely but almost entirely within
6 where we operate today.

7 The impacted area generally speaking mostly is in the
8 new build portion when you go from Wall around the southern
9 Black Hills and into Gillette. That's the area that you would
10 likely have an unavoidable -- we have a route that's been
11 approved and been through the process. You've got a route --
12 there is some -- and I think Doug and Randy have talked about
13 this in the past.

14 There is some but very limited wiggle room on what you
15 can do in that area. But that's where we have to come up with
16 STB's answer to whatever that ultimate treatment is and that
17 mitigation and compensation. But there would be -- without any
18 question there will be historical and cultural sites that the
19 railroad tracks will be going through that there needs to be
20 some resolution to that. What is the best way to offset that
21 impact?

22 I hope that's accurate.

23 MS. GLIDDEN: No. That was good. Thank you.

24 MR. EAGLE BEAR: Yeah. And I guess my question would
25 be, for example, if this took place, it happened, support for

1 scholarship. You know, how much are you going to allow? You
2 know, we should put dollar amounts in there like \$10 billion or
3 something like that, you know. We've got to be realistic, you
4 know. Why get a dollar when you can get \$10 billion.

5 MR. HERB JONES: And I just think that's where --
6 that's the point I was trying to make earlier, Cathy, is I think
7 what we have to know is kind of in the global sense is what the
8 impacts are. And the only way we're going to know that is to go
9 through this identification process. And to know from one end
10 to the other totally what we're talking about, then we can come
11 up with some kind of global approach if not site by site to what
12 you do to address particular types of sites that you would have
13 out there.

14 But that's what I was saying before. I think you have
15 to be able to go through this I.D. process, bring that to
16 conclusion so we know what we're dealing with so you can get to
17 your \$10 billion answer.

18 MS. GLIDDEN: Well, if you look at the P.A., it really
19 sort of outlines it in the order in which things would occur.
20 You know, you identify the sites. You determine if they're
21 eligible for the National Register. You decide if there's going
22 to be impacts and what kind of impacts. And then you develop
23 treatment plans to address those adverse effects to those
24 properties.

25 So we have to get to that point before we can really

1 develop the treatment plans because we have to know what the
2 impacts are going to be before we get to, well, a billion dollar
3 trust fund or something, which I really -- I think that's a tad
4 bit unlikely.

5 MR. YOUPEE: Yeah. But you have to distinguish those
6 two. You have to distinguish those two. The impacts regarding
7 sites, the impacts for economic stimulus. One should hold the
8 other one up.

9 MS. GLIDDEN: I think that what I was hoping in terms
10 of developing this study, this tribal involvement work plan, is
11 a two-pronged kind of mitigation package. One in terms of that
12 we deal with treatments for those sites that can't be avoided.
13 And one that would deal with the overall impact of the project
14 on the entire area in terms of the values.

15 And so, you know, I think that that -- that those
16 issues are going to be addressed through the treatment that
17 would be addressing the specific sites that are identified in a
18 field that can't be avoided. And then mitigation for the
19 overall impacts, which would include potentially, you know, the
20 types of things that you were talking about in terms of job
21 training and so on. I mean, we've already got it in the MOA.
22 And I know it wasn't signed.

23 MR. SCOTT JONES: Yes, it was.

24 MS. GLIDDEN: Or apparently, okay, it was signed. I'm
25 sorry.

1 MR. SCOTT JONES: We'll say it's disputed. I'll agree
2 with you.

3 MS. GLIDDEN: Okay. There's some question about it.
4 The fact is it's still a condition in the environmental
5 document. So it's there. 107.

6 Pam.

7 MS. HALVERSON: You also need to put in there -- for
8 the sites that have been destroyed in Minnesota that aren't
9 on --

10 MS. GLIDDEN: Hang on, Pam. I'm sorry, but we won't
11 be able to hear you.

12 MS. HALVERSON: I can yell real loud. Okay. You're
13 talking about the sites that are -- how you're going to mitigate
14 and deal with the sites that you can't avoid.

15 What about the sites in Minnesota that have been
16 destroyed that DM&E has already in the past done? And what
17 about those sites? What's going to happen there?

18 MS. GLIDDEN: They have to be considered. I mean,
19 there were impacts to those sites. Those impacts have to be
20 addressed in terms of the mitigation factor and treatment plan.

21 MS. HALVERSON: Okay. They were surveyed by an
22 archeologist, and they were documented. They were documented as
23 potential sacred sites. But then DM&E came in and built their
24 trestle over the creek and filled it in with a burial mound. So
25 how are you going to compensate for that?

1 MS. GLIDDEN: Well, that's a question that I think all
2 the tribes need to come together and decide upon. I mean, one
3 of the things we've got going today is a tribal caucus. And
4 that will be an opportunity to discuss exactly those sorts of
5 issues.

6 Okay. We have a bunch of hands up. Whose hand came
7 up first?

8 MR. HERB JONES: This is on the same question but --

9 MS. GLIDDEN: Can we get the microphone to Tim? Tim,
10 can you talk loud?

11 MR. MENTZ: Just for the record, Tim Mentz,
12 Standing Rock. And I'm hearing a number of things -- a lot of
13 things that are dealing with your subject of mitigation.

14 Russell, they are proposing certain things to mitigate
15 them, to offset or -- in order -- what you're saying, putting a
16 price tag on those types of areas that we're mitigating are
17 going to be destroyed. At least I'm under the understanding
18 that's the way it's going to happen. And they didn't tell you
19 very clear, they're bouncing around it, but basically this is to
20 offset. This is what they're proposing in lieu of mitigation
21 for the mitigation process.

22 Again, there is certain ones that have signed these
23 documents, certain ones -- particularly the P.A. Just bearing
24 in mind that, yeah, we have yet to sign that. We probably will
25 take a look again, if you're going to circulate it, whether

1 we're going to sign that or not.

2 But, again, my point, one of the points I wanted to
3 raise was some of those areas out there in knowing that you have
4 an established route and it's going to go through certain areas,
5 some of them we can't put a price tag on. And some of the
6 reasons why I'm saying that is because it's an inherent
7 responsibility and something I think the academic side will not
8 understand right now.

9 Quantifying spirituality, that's what I call it.
10 Basically mitigating spirituality now. We're talking about that
11 and putting a price on it, and I'm really in total disagreement
12 with that. I think there can be some types of economic
13 pushes -- you've got it up there as far as doing some type of
14 economic structure to address it. I think we better be really
15 clear that we separate that from mitigation or the process of
16 mitigation.

17 If I'm going to sit here and listen to your
18 consultants, also you addressing mitigation through a price tag,
19 then I guess that's going to be one of the thing that we're
20 going to have to address today in the tribal caucus.

21 The MOA that's sitting here right now, it's not
22 changed any bit. But, again, there's reasons why certain tribes
23 still have not signed the P.A. or that MOA, simply because of
24 the unresolved issues we have raised in the past.

25 Right now this whole discussion is dominated by money.

1 I want to get back to what you were calling the I.D., the I.D.
2 plan, you know, because that's what's going to drive it. And
3 that's, again, what we're going to talk about dollar amounts
4 when we mitigate it. But we're not to that yet. We haven't
5 looked at the whole route yet for TCPs. And in this document it
6 says tribes hurry up and get on the TCP process.

7 I can understand what you're saying there, but, again,
8 we as tribes would need to talk about that.

9 MS. GLIDDEN: Tim, this is an open discussion, and the
10 whole point of this discussion is to get your -- you know, your
11 opinions about --

12 MR. MENTZ: Can I finish my opinion then?

13 MS. GLIDDEN: I'm sorry. I thought you were finished.

14 MR. MENTZ: No, I'm not finished. I think the issue
15 that my relatives here are talking about is very relevant for me
16 to address it. And, again, what I'm saying is that for the
17 interest of our tribe, me recommending something back to the
18 tribal government, I'm going to have to really be very clear on
19 those types of levels now that are being established in this
20 project that's going to play into a lot of the other projects
21 when we start saying we're putting a price tag on mitigating
22 certain areas. That's what we're doing.

23 And not to belabor it. I think we'll discuss that.
24 And I want to bring this up during the caucus this afternoon.
25 But, again, I respect those tribes and if tribes are going to

1 sign on, that's fine. I wholeheartedly support that. But when
2 a tribe does not sign, and that's back to Russell's question of
3 being a signatory, you cannot preempt -- you cannot -- better
4 yet, you cannot walk away from a tribe that's interested for
5 one, that has an inherent responsibility, two, that has treaty
6 ties to the land, that's three, that's within our aboriginal
7 homeland, ancestral homelands.

8 And now to see -- for me to sit here and see that it's
9 continually woven that if you signed this as a signatory, you're
10 getting all of these rights, that's not negotiable to the
11 Standing Rock Sioux Tribe. That's not even a mitigative
12 process. It's not.

13 And I think the tribes that are sitting around this
14 table should at least respect what I'm saying. You don't have
15 to agree with me. You don't have to even appreciate what I'm
16 saying. But what I'm saying is let's take this back, and, yes,
17 we will talk about this. Because I've got some problems with
18 when we start mitigating sacred sites.

19 The issues that came up this past summer, I mean,
20 that's a whole different concept of how do we discuss these
21 types of impacts going on to these types of sites that we know.

22 And I'm leery about mixing money with that when we
23 start talking about the spirituality of our tribes. Out of
24 respect for myself and the individuals that are at home in our
25 bands, our four bands, our reservation, and thinking about all

1 of these other individuals that are sitting around here, I think
2 that's important for us to come to terms with. Because
3 obviously we haven't yet.

4 And I respect everybody's interest here. And how they
5 play that out, that's fine if you want to sign. But I guess for
6 the important part of my presence here and understanding the
7 MOA, we will discuss that again. The P.A., we'll discuss that
8 again.

9 But the biggest issue we have right now is when
10 federal agencies, the lead federal agency, pushes those
11 determinations to SHPO and within that course -- like those
12 documents there that just got put there on the table today, I
13 haven't seen those yet. You're squeezing us on time as far as
14 review, offering comments.

15 I know maybe -- I know you're reacting to me, but let
16 me just finish. And providing adequate review enough for me to
17 sit here and talk to you about them. But, see, the tribes here
18 from what I understand at least in my limited involvement, we
19 haven't sat and discussed how we're going to put a price tag or
20 mitigate certain sites. And we all have a feeling about our
21 spirituality of what we should be doing correctly and conducting
22 ourselves in that manner to try to make the best decision for
23 our generations at home.

24 And finally I will say that, you know, these types of
25 areas that you're coming through, you know, everybody forgets

1 about this. And maybe they don't. Maybe we just don't talk
2 about it enough. But some of these sites are the genesis place,
3 the genesis areas of our spirituality. And for site types to be
4 there in that condition in that particular area, particularly of
5 these areas now that when you are talking about a corridor
6 that's already fixed, there's no way around some of these
7 certain areas, that makes it very difficult for us as tribal
8 people to agree on what's the mitigative approach.

9 Right now it's mostly data recovery from what I'm
10 seeing, simply because, yes, you're saying exactly what's
11 written in here is that we're going to blow through it. But in
12 the meantime we're going to offset these things with employment,
13 which is really good. That's fine. Some of the tribes' reps,
14 that's what they wanted included in these things. That's fine.
15 But there is going to be some of us that may not agree even with
16 our own relatives. And that's fine too.

17 But the point is is that when we start putting
18 documents together and the only interest that you see across the
19 table in looking at me is that you need to consult with me and
20 it doesn't reflect anywhere in the final documents, then we have
21 a problem with us raising our issues to that level of compliance
22 to 106.

23 In other words, you're going to have to come to the
24 Standing Rock Sioux Tribe and say what's areas that have
25 religious and cultural significance? What areas do you deem are

1 important to your tribe? And that's the discussion I want to
2 get to later today. Or at least we should try to address it
3 somehow. Because it's getting back to the mitigation process.

4 And I hate to see this is going to be two days of
5 discussing mitigation because I'll probably leave then.
6 Individuals here can discuss it, but, again, for the purposes of
7 MOA right now we will not sign that. And that's our right. And
8 I hope the tribes respect that.

9 And the P.A., because it's not been signed by the
10 Standing Rock Sioux Tribe, we still have unresolved issues with
11 the P.A. That's why we won't sign it. But it's hard to sit
12 here, to not be a signatory or engaged in a conversation like
13 this because for me it's a repeat of what the Corps of Engineers
14 did. They exclude tribes. Okay. That's all right. You've got
15 your differences. We'll turn our face. We'll look at this
16 tribe.

17 MS. GLIDDEN: We want you involved.

18 MR. MENTZ: I understand that. But what I'm saying is
19 that process is continuing on. And every one of them probably
20 can agree with me that these issues continue to come up with
21 these types of projects, and we need a tribal caucus to decide
22 some of these things, not to have you decide that. We should do
23 that.

24 MS. GLIDDEN: I agree.

25 MR. MENTZ: And finally what I'll say is that, you

1 know, the process itself, if it's not working, you have to prove
2 that you provided an avenue of at least alleviating those
3 concerns I have with the Standing Rock Sioux Tribe.

4 You have to do that. Part of 106. Part of you coming
5 to me individually as a tribe and saying, Tim, yes, I understand
6 your concerns. How can we assist in the process? Maybe you
7 can't. And maybe we walk away with never getting nothing
8 resolved.

9 But the point is is right now you've got a document
10 that has a few signatures, that some of these tribes have not
11 been signatories also, and you're precluding us. You're taking
12 us out of the process just by currently what's sitting in front
13 of us right now. And if that's the mitigative approach -- and I
14 would like to see the 147 violations or the issues that came up
15 or what was stated earlier at the beginning because part of that
16 was -- you said one of the issues was this process.

17 I would like to understand what all came up in the
18 Eighth Circuit Court and understanding that now. Because I need
19 to have an understanding of maybe I'm coming from the wrong
20 direction or maybe I'm not making the right decision and I'm
21 making the wrong recommendations to the tribe. I need to
22 understand fully.

23 MS. GLIDDEN: All right.

24 MR. MENTZ: So I guess that's where I'm leading to.
25 And when we get to that I would really like to address I guess

1 two questions I have. But in the point of what we're doing
2 right now just for the matter of fact and making it clear, I
3 don't agree with putting money to offset a mitigative approach
4 to destroy. That's never been our process. It's never been my
5 position as a THPO for Standing Rock.

6 And I want to talk about how you're going to put price
7 tags on sites. Because that's what's going to happen. And the
8 whole picture -- and the whole picture we're talking about
9 mitigation -- you can tell me right now that I'm wrong maybe.
10 That's fine. But there is four areas there that you're offering
11 a process, a scholarship and the rest of them to offset part of
12 the mitigation. That's what it is. And that's what Russell is
13 questioning, asking the question about.

14 So, again, I mean, just to be clear, I would like to
15 move on to where we're getting away from this dollar and cents
16 thing.

17 MS. GLIDDEN: Sure.

18 MR. MENTZ: Because mitigation compensation, it's a
19 whole new approach.

20 MS. GLIDDEN: It could be anything. Anything. It's
21 open.

22 MR. MENTZ: I understand that. But I'm saying what's
23 currently here right now is mitigation and compensation.

24 MS. GLIDDEN: Well, it's just -- those are just words.
25 The bottom line is is that it could be anything, anything.

1 There's no limit in terms of --

2 MR. MENTZ: Thank you.

3 MS. GLIDDEN: Creativity or any thoughts that you have
4 about what you think should be done. I mean, you can't put a
5 price tag on those kinds of sites. Of course not. And we
6 understand that. So that's why we need -- we need your
7 expertise to understand precisely what needs to be done. Even
8 if it's just between you. Even if we don't even know what it
9 is. If you go out there and do it individually. If it's
10 confidential. It's open.

11 And, you know, I really appreciate your expressing
12 those concerns because they're important. Thank you so much.

13 We need to break up this discussion. But it is
14 lunchtime. We're actually 10 minutes late. So, Scott, did you
15 want to say something?

16 MR. SCOTT JONES: Actually I think Faith was before
17 me.

18 MS. SPOTTED EAGLE: Thank you. Okay. I just had
19 three comments here, and I'm getting older so I want to get them
20 on the record before I forget them.

21 One is the protocols in tribal belief systems. And
22 I know you have the cross-cultural training thing down here.
23 And I can't remember who mentioned earlier about whether
24 Louis Berger had that competence to be able to do some of those
25 things. And I just wanted to share some of the things from the

1 field that point out the need for that.

2 One of the strong beliefs and knowledge and awareness
3 that we have is when you work in these sites you don't use any
4 substances. And we had an instance -- I know the western crew
5 came across that also. But we had an instance when we were in
6 the Minnesota area when our crew was out there one of the arc
7 people was drinking heavily from whatever company that person
8 was from. And the crew was concerned about it. And that's an
9 example I suppose of dispute resolution on the ground trying to
10 figure out what to do and who does what.

11 And so they were disturbed about it, and the next
12 morning they went out in the field and it was pretty cold,
13 extenuating circumstances and this guy prior to that
14 happening -- this is the second issue. The competence and the
15 time that you do these things. And this is no reflection on
16 gender one way or the other. You take it the way you want.

17 But our monitors were out there standing there, and
18 the role is not to dig. And so we have this female arc that is
19 trying to get this shovel in the ground, and she can't get it in
20 the ground. And so she's jumping on this shovel, and she can't
21 get it in.

22 And our crew is standing there thinking, oh, my gosh,
23 this lady can't do this. What do we do? We felt really bad for
24 her. She's trying to do her shovel test and she can't even get
25 it in the ground.

1 One of them -- he compromised himself because we do
2 not dig. And so he went over there, and he helped her with the
3 shovel. He said, I don't do this, but you should be able to do
4 this and she couldn't do it.

5 So that's a level of she couldn't even do her own
6 shovel test. So that was disturbing to them. So we made a note
7 of that when we gave the report I think to Mike.

8 The second thing on the protocol regarding the
9 individual that was drinking, that same morning he went out, and
10 the crew was a little bit leery about that. Because they know
11 the circumstances. They witnessed this before. He went out,
12 jumped on the shovel, and he broke something in his leg. It
13 popped. And then he walked off the field. And so then the crew
14 said, see, that's what happens.

15 And so those are the kind of things that we know after
16 being out in the field that you do not do that. So that was an
17 actual instance that we witnessed.

18 And then the third I wanted to say, and I guess we'll
19 elaborate on this later, is that I don't want to rain on your
20 parade with the archaeological evidence, but I probably will.
21 When we do the TCPs we don't use your data, and we don't look at
22 the arc stuff. We take the maps and make note of where they
23 are. But we do it without the arc stuff.

24 We go out and do it first. We don't want it to
25 prejudice us. We don't want it to mislead us. And we did

1 that -- we already have a history of doing that. We've done the
2 Missouri River, portions of the Missouri River, and we'll be
3 going from Ft. Randall to Gavins Point this summer. Currently
4 we're doing one.

5 But, like I said, in the arc map that we used they
6 missed completely areas that are just obvious to us. So your
7 data from your world view doesn't mean that is -- and so if we
8 were to be involved from our approach, our team, we would go out
9 first before examining all of your data. Then it would speak to
10 us. So I wanted to make those comments.

11 MS. GLIDDEN: Faith, is there any way that you could
12 be involved in the cross-cultural training, given that you've
13 been out there?

14 MS. SPOTTED EAGLE: Yeah. We'd have to talk more
15 because I don't want to be -- I'd have to know. I'm a little
16 bit leery so we'd have to talk more.

17 MR. SCOTT JONES: For the sake of the group I'll
18 refrain from making my comments until after lunch. Thank you.

19 MR. HENKE: We're employing those people. And we're
20 paying for them. And if somebody was out there drinking and
21 it's a concern, raise it to the highest level. We have some
22 very, very strict rules in our company over drinking. And if
23 we -- you know, someone give me the name and we'll sort that.
24 Because that is not going to go on. I can guarantee you that.

25 MS. SPOTTED EAGLE: We did do a written report.

1 MR. HENKE: Do we have a name?

2 MR. MADSON: Yes. I do, and that person will no
3 longer work for that company or us.

4 MR. HENKE: Okay.

5 MS. HALVERSON: I was in the field sometime when I had
6 an opportunity to be out there, and I requested the archeologist
7 there to have her crew, you know, not to -- you know, about
8 drinking. And she said she didn't have authority over her crew
9 after hours. So I don't know if -- you know --

10 MR. MADSON: This is an issue that's been brought up
11 repeatedly over the past several months since November.
12 Internally we have addressed this with our companies -- or
13 contracting companies that there is a definite need for
14 moderation when these folks are in the field because of many
15 issues which they don't understand.

16 The training that we're going to do or hopefully will
17 do here in the future as part of the work plan will address that
18 very issue: What it means to have used the night before and
19 walk onto a site that next day. Or not be in the right frame of
20 mind not just for visiting a site but also doing their work. So
21 this will be addressed.

22 MS. GLIDDEN: Yeah. I mean, the bottom line is we
23 have to develop a set of protocols, make sure that the kinds of
24 things that happen out in the field don't happen again and that
25 your concerns are addressed and we have a protocol before we

1 even go out there to ensure that these things just don't happen.
2 That's part of this training aspect. Because we know -- I think
3 in a way, though, having had people out in the field recently
4 was in a way helpful because it highlighted what issues are
5 going to be coming up so that we can -- we can sort of be
6 preemptive and address those before the tribes go out again.

7 So please bring any of those issues to my attention,
8 and we'll include those in that cross-cultural training. So
9 let's have lunch.

10 MR. EAGLE BEAR: Just to finish up on this, we had a
11 meeting in Pierre, and I think we requested the presence of --
12 Mike and Doug. I think the head honchos here. They all showed
13 up. And that issue was brought up there too.

14 MR. MADSON: Yes.

15 MR. EAGLE BEAR: What happened on that? You said you
16 were going to go back and take care of it. What happened with
17 that issue?

18 MR. MADSON: Yeah. We discussed it, of course, the
19 head honchos and I. And going back to our contractors, the
20 management of those contractors and letting them know what we
21 had heard from you, from the people in the field, and also
22 telling them that this was not acceptable behavior.

23 The responsibility that -- as Pam had mentioned, the
24 contractor who mentioned she can't govern what her people do
25 after work, well, that's not entirely true. And we recognize

1 that, that they are responsible to show up -- to do their work,
2 and they have to be in the right frame of mind and have the
3 ability to do their job. It's performance-based matter. If
4 there are performance issues that happen in the field, and
5 that's one of them, if they're not capable of performing their
6 work during that day, that will be addressed.

7 MR. EAGLE BEAR: This particular incident, was that
8 addressed?

9 MR. MADSON: Yes.

10 MR. EAGLE BEAR: What happened?

11 MR. MADSON: Yes. That person will no longer work for
12 that contractor.

13 MR. EAGLE BEAR: I think before we break for lunch.

14 (Mr. Little Ghost says prayer)

15 (A lunch recess is taken)

16 MS. GLIDDEN: We are going to get started. We want to
17 make sure there's time for the tribal caucus. So we want to get
18 going again. And Dave Bibler is going to talk a little bit
19 about -- before we start Scott will ask his question which he
20 wasn't able to ask. He was kindly gracious to wait. Okay.

21 MR. SCOTT JONES: Thank you for lunch, whoever, STB,
22 DM&E, I.C., whoever. It was good. I appreciate that.

23 I actually don't have a question, but I do want to
24 just point out a couple of things. And then, of course, I'll
25 probably have to point them out again because we don't have all

1 the participants back. But the Programmatic Agreement -- just
2 to clarify, the Programmatic Agreement is signed between federal
3 agencies.

4 If you look at your Programmatic Agreement, it is
5 between six federal agencies. And some tribes, including mine,
6 fought very hard to get tribes listed as invited signatories.

7 Why? Because in the beginning the agencies didn't
8 want the tribes to sign the P.A. I think it's important that we
9 have a historical understanding of this document. Tribes were
10 not signatures to the P.A. Only the federal agencies were. And
11 it took a lot of fighting to get us to be allowed as invited
12 signators.

13 And I might add the Medicine Wheel Coalition, the
14 Gray Eagles, the Treaty Council, were all part of that battle so
15 that they could become signatories as well.

16 I don't advocate anybody signing or anybody not
17 signing. I don't. That's just bad policy. What we did try to
18 do with these documents -- and, by the way, these documents were
19 not, Cathy, created in a vacuum. These documents did not just
20 fall from the sky. These were created with hard work and people
21 applying themselves in a process that started in 1999.

22 You need to be aware of that. All the tribes were
23 mailed these for comment. All the tribes were asked to sit at
24 the table and amend them and fix them and bring forward your
25 comments. Here we are in 1999, 2008. By the way it's nine

1 years this month. This started in January in Williston,
2 North Dakota in 1999. Nine years later we've had ample
3 opportunity to pick this apart and put it back together.

4 However, I'm very pleased to state that we can fix
5 whatever people are objecting to, but people have to be
6 specific.

7 There is a section, if I can find it again, that's
8 called amendment. I'm on the P.A. And it's on page 13 of 27 or
9 under Appendix D, page 7. Signatories to this agreement may
10 request that it be amended whereupon the signatories will
11 consult in accordance with 36 CFR 800.14 to consider such
12 amendment. Again, the signatories are the federal agencies.

13 MS. GLIDDEN: Well, and the tribes.

14 MR. SCOTT JONES: The invited signatories are the
15 tribes, the Gray Eagles, the Sioux Nation Treaty Council, the
16 Medicine Wheel Coalition, and others I may be forgetting.

17 MS. GLIDDEN: Scott, if I may --

18 MR. SCOTT JONES: And if I can just go on, okay?
19 Anybody on that list can ask for amendment. Okay. If there are
20 objections to this P.A., it can be amended.

21 However, as a tribe that signed -- that's what I'm
22 representing here. I'm sitting here representing a tribe that
23 signed this some time ago. And I can't advocate or not advocate
24 for others to sign it. But my tribe did sign it, and that means
25 something. Okay? And I'm not going to allow that signature to

1 be denigrated or belittled because we put a lot of work and
2 effort and a lot of thought into signing this.

3 I don't tell anybody what to do. I don't say don't
4 sign it, do sign it. That's not why I'm here. I'm here to see
5 that the terms of these agreements are held up. That's why we
6 signed them. That's why we sat at the table. That's why we've
7 been involved for nine solid years.

8 You need to know that, Cathy. You can take as much
9 comment that you want from anybody in the world, but there are
10 people that need to be given the due respect who did sign this
11 agreement, who did fight those fights, who have been involved
12 and commented and sat at the table and put a lot of effort into
13 it.

14 And I'll say that over and over again because that's
15 just what you call good form. It's basic inter-governmental
16 relationship building. Good form. And we put a lot into that.

17 Moving on to the MOA --

18 MS. GLIDDEN: Can we go back to the P.A. just so I can
19 address your questions?

20 MR. SCOTT JONES: Sure we can. But let me just finish
21 this, please. The MOA was developed because the tribes could be
22 a primary signatory to this MOA. It covered everything that
23 could not be covered -- there were so many arguments about 106
24 and 110 and the P.A. can only cover this and that.

25 So we developed an MOA to cover those things that were

1 of concern to the tribes or at least tribes willing to involve
2 themselves. Things like endangered species, training,
3 employment, development, the development of our perspective on
4 history and the development of the railroads in the west. All
5 of those things were built into this.

6 And we were a primary signer. Tribes. We had the
7 opportunity to be a primary signer. Not an invited signatory.
8 Okay. And somebody's going to have to look at 106 and tell me
9 the difference between a signatory --

10 MS. GLIDDEN: Well, there basically is no difference.
11 A signatory through a P.A. has the power to do all the things
12 that are stated in here that the signatories can do.

13 MR. SCOTT JONES: An invited signatory you're saying.

14 MS. GLIDDEN: Yes. An invited signatory. You're
15 still a signatory.

16 MR. SCOTT JONES: I'm not disagreeing with that. I
17 just want to clarify here so we're not off in this vague world
18 where we're arguing over things that really have been argued
19 already.

20 MS. GLIDDEN: Well, as a signatory to this P.A. you do
21 have the power, if you choose to, to go through, you know, the
22 P.A. and address your concerns. I mean, there's various
23 sections here. You've mentioned the amendment. Signatories to
24 this amendment may request that it be amended whereupon the
25 signatories will consult in accordance with 36 CFR 800.14 to

1 consider each amendment.

2 MR. SCOTT JONES: In the spirit of that right now
3 representing a signatory to this agreement I've been told there
4 are amendments that would wish to be brought forward. I'm
5 hoping at the tribal caucus I hear those amendments in a lucid
6 and clear manner. And I'm just letting you know that there
7 probably will be amendments that we will be requesting as a
8 signatory to the P.A. Notwithstanding somebody not wanting to
9 sign or somebody who wants to sign in the future or wants to
10 sign tomorrow or has to go home and --

11 I'm not sure what they are. But I just chatted real
12 briefly with somebody, and they said that they have a lot of
13 little notes on how this can be amended to better serve the
14 tribes. So that was what I was leading to. Okay.

15 One other thing I want to make a point about. When we
16 talk about mitigation and compensation I'm not sure of your
17 legal framework, but I do know this: On the Missouri River both
18 of those things have been addressed either through a JTAC or
19 infrastructure settlement and through another legislation called
20 Title 6.

21 I don't advocate and I don't think anybody here
22 advocates the selling or the purchasing or getting payment for
23 the destruction of a sacred or important holy, cultural, or
24 historic site. But if the lead agency who, by the way, has the
25 authority here, makes a determination that they're going to

1 destroy a site after having gone through the various public
2 processes and the other processes under NAGPRA, National
3 Historic Preservation Act, NEPA, ARPA, all of those varies
4 things and they still make a determination to destroy a site,
5 the lead agency has that authority. That's built right into the
6 law.

7 Another reason for these documents is so that at a
8 higher level on a higher plain we can make our case on why
9 things shouldn't be destroyed. And if you continue as a lead
10 agency to allow them to be destroyed, these documents put us
11 into a position to negotiate how they'll be approached, how
12 they'll be dissembled, how they'll be treated, what will become
13 of whatever is a part of the area.

14 Because, by the way, we're talking about various
15 jurisdictions here, mostly private, non-Indian land, off
16 reservation and federal land. Those two different types of
17 jurisdiction alone call for different treatments. Different
18 laws apply.

19 So I just wanted to make those comments. And, again,
20 thanks for a good lunch.

21 MS. GLIDDEN: All right. Thank you. Dave, do you
22 want to go ahead and get into contracting?

23 MR. BIBLER: Sure. My name's Dave Bibler. I had the
24 illustrious job of doing the contracting for the tribal
25 monitors.

1 I did create some handouts here. I created a handout
2 that I'm just going to read from. I'm not going to pass that
3 around. Let me start with that.

4 Let me start by saying that the tribal monitors are
5 different than the instruction monitors. And, like I said
6 earlier, the tribal monitors were paid for through Louis Berger.
7 We were not equipped to do that. We did it. And in some ways
8 it didn't work. And in a lot of ways we learned a lot of
9 things. So I'm sure we'll hear some things here. But let me
10 just read a couple of things that happened.

11 A series of problems occurred during the last field
12 season when the tribal representatives accompanied the
13 archeologists who were conducting archeological field surveys.
14 In a word, to reduce the number of problems several actions have
15 been proposed to help remedy the difficulties encountered.

16 One of the first that I would propose is that we
17 create a contracts group for the folks that were involved or
18 will be involved with the contracting in the future. That would
19 be the first thing.

20 The contract group will be made up of volunteer
21 individual from THPOs that have working field representatives.
22 This group also served to conduct inquiries as to problems as
23 they arise and attempt to resolve these problems and any
24 problems that continually recur.

25 One of the biggest -- well, let me go back. There

1 were two types of contracts that we did. There was an
2 individual contract with individuals and I think we had two
3 tribal contracts where the tribes would invoice us and in the
4 other situations, individual contracts, individuals would send
5 us the invoices.

6 So one of the biggest problems with this was the --
7 there was no standardized forms. And that would be the first
8 thing that we've done. And I have some examples here that I can
9 hand around.

10 There were also several types of payment that was
11 going on as well. There was quite a variety of pay scale. And
12 that's something that we would like to talk about and make it
13 more uniform and more equitable. And that's one of the biggest
14 things that we'll have to do.

15 There was also some questions as to the -- well, the
16 standardized forms. That was probably the biggest point of
17 contention because we got so many different ones. Pam Halverson
18 and I did a lot of work together, and she would call in some of
19 these hours' and days' work and then when we actually got the
20 invoices there was some discrepancies.

21 And those are the sort of things that the
22 standardization of forms and sitting down with folks to figure
23 out how best to do this would be essential.

24 There was also some problems with check cashing. The
25 checks that Berger uses is from a bank in the southeast. It's a

1 fairly large bank, Wachovia. But a lot of folks out here had
2 not heard of that. I'm working with Wells Fargo to set up a
3 national check cashing account where I think their Wells Fargo
4 office is fairly close to most of the line where folks could go
5 and cash their checks for \$5 at these offices.

6 I'm not getting a lot of positive response back from
7 Wells Fargo. I have talked to them several times. I actually
8 sat down and visited with one of their vice presidents. We're
9 still working on that, unfortunately.

10 Also we had some problems with check mailings. And
11 the mailings were people were moving around a lot in the field,
12 and we couldn't really track them. And we need to do that in a
13 better fashion. We also need physical addresses for these
14 folks. We don't hesitate to FedEx any of the checks out, but
15 when we don't have a physical address and we only have a Post
16 Office Box, that's not a feasible option. They won't do that.

17 We've also had problems with checks being lost and
18 that's because there was no -- we didn't have the ability to
19 FedEx them. So that would be one essential thing.

20 We've set up a program with the U.S. Postal Service
21 where all the mail can be sent now. It's registered but you
22 don't have to sign for it. So that way it can be tracked as
23 well.

24 So with that, I'd like to open up the floor for a few
25 minutes to get some concerns. I know there were a lot of

1 concerns and a lot of problems. We're working towards
2 eliminating those. But if I can get some volunteers from a
3 couple of folks that have active tribal reps that are going to
4 be out there again come this next field season, I think that
5 would go a long ways.

6 Any questions? Oh, come on. This was a big problem
7 and a big issue. Dianne? Pam? I heard a lot from you.

8 MS. DESROSIERS: Well, I thought it went good for me.

9 MR. BIBLER: Good. I know that's not a shared
10 opinion. That was one of the problems, but when there were
11 problems there was really no recourse for any of the field folks
12 so what they would do is start making calls to folks like
13 Dianne. And she was kind of put in a bad situation. If we can
14 kind of centralize that and create this group, then we can
15 hopefully eliminate some of this situation and make it go a lot
16 more smoothly.

17 I know we had it on a weekly base -- or a paycheck
18 every week. We may have to change that to two weeks because the
19 company I work for is not set up for that, and that caused a lot
20 of chaos. And we may go to two-week sessions, two-week
21 paychecks. In order to accommodate that I'll work with the
22 railroad as best possible to see if we can come up with some
23 front money for the first couple of weeks to carry folks over.

24 MR. FISHER: I just had one question. Some of the
25 issues that you've listed here, this is specific to what you're

1 talking about and I've got other questions from some of the
2 other folks but this is specific.

3 On the discrepancy of the wage scale, that seems to be
4 also an issue. What do you propose?

5 MR. BIBLER: I would propose that the tribal folks
6 where they have it set up that the tribe monitors or we pay --
7 the tribe invoices us. I know with the Sisseton-Wahpeton they
8 charge what is it -- do you mind if I say or not?

9 MS. HALVERSON: We already know. You already told us.

10 MR. BIBLER: They charge \$200 a day per individual,
11 and I believe they pay the individuals 25 or \$30 an hour. So in
12 that situation it comes roughly -- I think it's \$400 a day.
13 Individually it would be nice to pay those folks 350. I don't
14 know. That's something we have to talk about.

15 I know there are folks out there that are making
16 substantially less. And they -- I hope that they're aware of
17 the situation. But some folks did not seem interested in the
18 money. It was more the, I think, cultural aspects of it, which
19 was a good thing. But it would be nice to create a uniform
20 system where, you know, you don't have problems with people
21 talking and getting upset.

22 MS. HALVERSON: Well, that's because, you know, some
23 of the tribes the monitors are contracted through DM&E -- or
24 through Louis Berger.

25 MR. BIBLER: We had to contract through Berger just

1 for -- it seemed better. It's not a conflict of interest.

2 MS. HALVERSON: So then the person -- the monitor is
3 receiving that money because they're doing the job.

4 MR. BIBLER: Yes.

5 MS. HALVERSON: And so we don't -- Lower Sioux
6 doesn't -- like I don't charge Louis Berger \$200 a day
7 contracting when somebody else is doing the work.

8 MR. BIBLER: I understand that. And that's why we
9 need to sit down and kind of go over this and get a consensus.
10 There is no uniformity right now. There are multiple pay scales
11 right now with individual and -- mostly individual accounts.

12 MS. SPOTTED EAGLE: The personal contracts work well
13 for us, but we just need some improvements.

14 MS. HALVERSON: You're talking in the wrong end.

15 MR. BIBLER: Talking in the wrong end or out the wrong
16 end. Yes.

17 MR. MENTZ: A question. You were talking earlier
18 about either running it through individual contracts or going
19 through the tribe and having the tribe invoice. I don't know if
20 some of us tribes are set up for that.

21 MR. BIBLER: That's what I was going to say. A lot of
22 tribes aren't. A lot of tribes don't want to take the tax
23 burden, and they don't want that. We're not saying that you
24 have to as a tribe. Individual contracts can work, but what we
25 want to do is get uniformity in that pay scale.

1 And since the tribes actually pay for overhead and
2 things like that, I would recommend that they make \$50 more,
3 they get the 400 rate or whatever the SWO is.

4 MS. DESROSIERS: And that was something that I wanted
5 to discuss within the tribal caucus. Because we wanted to make
6 sure that everything was known. Or, I mean, how we worked it.
7 And that's how we've had it. It's been set up like that.

8 MR. BIBLER: There have been a lot of difficulties
9 with invoicing, mileage, several check problems, things like
10 that that need to get addressed.

11 MR. WHITTED: We had talked about having a centralized
12 office where all the tribes worked out of, and that office would
13 actually invoice Louis Berger.

14 MR. BIBLER: That is an option. That's up to you
15 folks.

16 MR. WHITTED: It would go a lot smoother. That way
17 our monitors aren't working directly for DM&E or Louis Berger.
18 They're coming out of our centralized office, and that same
19 office would cover the monitor training and the cultural
20 surveys.

21 MR. BIBLER: That issue's come up several times, but I
22 don't know whether you'd get consensus on it. It's an excellent
23 idea. Yeah.

24 MR. RHODD: As one of the field personnel that was out
25 in Pierre on the new build, there are several issues, but in all

1 actuality, it's not that I don't want to bring them up here but
2 I'm agreeing with Dianne right now that this -- these need to be
3 handled in tribal caucus.

4 Because there are sensitivity issues that we need to
5 deal with. There's personnel issues. There's lodging issues.
6 I guess I can bring up the lodging one actually. I mean, it's
7 not that -- well, yeah. There was a discrepancy when we moved
8 from Hot Springs up here to this motel over here, Country Inn &
9 Suites I think it is.

10 Well, I think the Indians got the Country Inn and the
11 archeologists got the suites is basically the way it worked out.
12 And not that that's necessarily a big thing, but, you know, I'd
13 like to have a hot tub in my room too after a day in the field.
14 So it may seem like a small thing, but there is a matter of
15 equality and parity here.

16 MR. BIBLER: That's what we're trying to get at.

17 MR. RHODD: And there are small things but again in
18 tribal caucus that can be brought out and we can work on that --
19 work on those issues. That one is the one that would be I guess
20 you could say most public in a sense.

21 And, well -- yeah. We'll just leave it at that.
22 Thank you.

23 MR. BIBLER: So I'm looking for volunteers. Ben,
24 since you're in the field, it might be nice if you would
25 volunteer. But it's entirely up to you, but you'd be the

1 perfect person as well as maybe a couple of other folks. And we
2 can have our own little meeting and kind of go over this after
3 you guys have caucused or at a later date and get this thing in
4 place before this starts again so we don't have near
5 catastrophes like we have.

6 Any other volunteers? Randy, are you going to
7 volunteer?

8 MR. HENKE: No. But somebody's got to turn up the
9 volume on this.

10 MR. BIBLER: Ben, are you going to volunteer or not?

11 MR. RHODD: Yeah.

12 MR. BIBLER: Well, that's a start. You're not going
13 to? Dianne?

14 MS. DESROSIERS: Jim. Jim's going to do it.

15 MR. BIBLER: Jim, Pam, Joyce --

16 MR. EAGLE BEAR: What are you going to do? Buy those
17 silver tubs for these workers?

18 MR. BIBLER: Hot tubs for everybody.

19 MS. HALVERSON: We're going to negotiate who gets the
20 suites and who doesn't.

21 MR. BIBLER: All right. Anything else on this?

22 MR. RHODD: I guess I do. I want to bring up one more
23 thing. I'd like to go ahead and just say one more thing. When
24 we were in the field down in Hot Springs one of the boys --
25 well, and his girlfriend they were -- they were feeling good.

1 And one of the things that came out that they mentioned was that
2 we were -- they were told not to talk to us after work, that
3 they were not to fraternize with us after work.

4 And this was kind of an interesting -- it was kind of
5 interesting. It was like it stopped us in our tracks a little
6 bit and saying what? You know.

7 And I'm not real sure exactly what the reasoning
8 behind that was, whether there was a fear that we were going to
9 bring them over to the other side or whatever, you know, whether
10 we were going to contaminate them, we were going to do what. I
11 don't know.

12 So it was one of those -- it's, again, in a sense a
13 small thing, but yet it has ramifications as to our working
14 relationship. It has ramifications to the relationship that we
15 were seeking to build as far as being in a trust -- trusting
16 each other in the field.

17 So it was just -- it was interesting when they brought
18 this out to us. And I'm not real sure where that was coming
19 from, whether it was one particular contracting company. Who
20 was it? And I don't know. But I think this is, again,
21 something that can be brought out in caucus and that we will
22 talk about because it's not conducive to a working atmosphere
23 that is -- we're as mutual assistants here.

24 All right. Thank you.

25 MR. BIBLER: Thank you. I'll be contacting you after

1 the caucus. Let's all get together and talk a little bit, and
2 we'll go from there. We'll set up a meeting or something, and
3 we can start working on the forms. Or at least go from the
4 forms that we have started.

5 Anything else before I give this back to Cathy?

6 MR. JACKSON: Yeah. I want to comment a little bit.
7 I guess we started this process off, and I've grown -- I've
8 gained a great deal of respect for Ambrose and the words of
9 wisdom I guess he's given to us as a group. But one of those
10 things was we've got to find a common ground here and trust each
11 other.

12 And I can tell you as the guy who ultimately has to
13 answer to Randy or the STB for how these people conduct
14 themselves in the field that there is no conspiracy here. There
15 is no black side, dark side. I've got a process to get through.
16 I've got a job to do to try and build a project. I've got
17 answers I've got to give. We're not trying to cover anything
18 up.

19 The only instruction we've given to our folks is that
20 they conduct themselves professionally. And they know what that
21 means as far as what decisions they make in the field, how they
22 conduct themselves in the field, and that's the only instruction
23 that we give them.

24 The thing about the hotel, I've heard this before.
25 We're not that organized that we could even go in there and

1 request that somehow archeologists get rooms before anybody
2 else. And then all of those contracts that are set up we're
3 trying to use where the DM&E has direct bill contracts so it
4 makes it easier on everybody to be able to get rooms without
5 having to pay out of pocket.

6 You know, those are the ways some of these businesses
7 conduct themselves. It has nothing to do with the field work
8 we've got done.

9 I guess where I want to back up a little bit is that
10 last year when we jumped into the field it was to meet a
11 specific need at which point Cathy and Vickie Rutson, the STB,
12 asked DM&E to hold off on doing additional testing work we had
13 to do.

14 And, again, from my perspective and I think Randy's,
15 who's trying to run this project, the STB's the lead federal
16 agency. There are 147 conditions they imposed upon us, and as
17 you add those conditions up to the other federal and state
18 agencies that have applicable say on what goes on in this
19 project, that list is about 3,000 conditions that we have to
20 adhere to. And we're doing our best to adhere to all of them.

21 One of those conditions, though, with the work that
22 we're trying to accomplish here as a group is the Section 106,
23 which has an archaeological component, and it has a tribal
24 component. And I don't get the luxury of being able to separate
25 those two. I've got to get both those boxes checked off and

1 make sure that I do what's right per the P.A. and per federal
2 law.

3 And so I guess that's what we're attempting to do here
4 today is that last year we responded to a need to meet some
5 timing of things. And we actually I think for all the
6 complaints that were here -- and I think there were still a lot
7 that was good that was accomplished in the field. Where we sit
8 today, though, going into the 2008 field season we have the
9 ability to affect what that program looks like to make sure
10 we're not dealing with these same issues.

11 And I think we've missed part of the point where we
12 are today, which is this work plan which we believe is in
13 keeping with the P.A. and ultimately the spirit and the terms of
14 the MOA gives us that framework to at least be able to do that.
15 And I'm hoping that we can concentrate back on discussing a few
16 of these points and build off of that before we go into next
17 year's work season so these things aren't at the front of our
18 conversations here.

19 MR. BIBLER: Right. That is the plan. So thank you.

20 MS. GLIDDEN: Doug, thank you so much. Because that's
21 just exactly the right way to I think word where we're at. And
22 I just -- I think going into this tribal caucus I just wanted to
23 ask that, you know, all of you go through this work plan
24 carefully and that you make comments and insertions or deletions
25 where you think they're necessary. I think the main areas that

1 we'd really like you to focus on would be the identification
2 aspect.

3 We have a three-prong process here where we have A,
4 the process for report review without field checks, the process
5 for report review with field checks, and the process for tribal
6 participation in new and ongoing archaeological will field work.

7 I'd ask that you look through that very carefully and
8 see if that will meet your needs in terms of identifying TCPs.

9 The other thing is the tribal study. That's on
10 page 4, number 2. We've left it very vague because, you know,
11 as I see it this is a tribal study. And it's your study. And
12 it can include pretty much anything, including I think some of
13 the concerns and stipulations in the MOA. The MOA talks about
14 faunal concerns and botanical issues and that sort of thing.
15 And that can be worked into this, I believe.

16 So, you know, feel free to explore this study in some
17 depth and include -- I mean, you can go ahead and replace this
18 paragraph if you'd like and just put in the wording for what
19 exactly you think this study should be.

20 And the other thing is on page 5 we have a project
21 training aspect. And if you could take a look at that very
22 carefully, particularly the cross-cultural training, and see if
23 that will address some of the issues that came up in the field.
24 And if you could give us the names of some people that could
25 work on the training from the tribal perspective.

1 The last thing is the Dispute Resolution Section,
2 Section 6, where we have proposed a grievance committee that
3 will be established to address and resolve disputes. And if we
4 could get you to decide on three tribal representatives that
5 could be included in this grievance committee -- we're thinking
6 we should have at least one member from the Sioux Nation.

7 So we really need to move forward with this. And if
8 we can -- if you could focus during the tribal caucus on this
9 plan, I'd really, really appreciate it. Because we need to --
10 we need to move forward with this. And any other issues that
11 you may have we can certainly address. And we have the time
12 frame tomorrow at the very beginning for an open discussion.

13 But thank you. We'll go into the tribal caucus now.

14 MR. HIS HORSE IS THUNDER: In the tribal study portion
15 of this how is it proposed that it be funded?

16 MS. GLIDDEN: That's a good question. One of the
17 things that I should have mentioned was that we want to know how
18 to set up the contract for this, whether or not it's easier for
19 the tribes to set it up or to set it up through DM&E or if you
20 have a preferred contractor you'd like to use.

21 So as far as the other aspects of funding, I don't
22 know if you want to address that. I guess Herb's not here.

23 Doug.

24 MR. JACKSON: I think the simple answer is right now
25 it's proposed to be a part of the overall STB compliance process

1 that the DM&E holds, and we have this portion budgeted right
2 now. So I think what Cathy's alluding to is just the mechanism
3 for how the study gets done. Whether that is directly
4 contracted and set up somehow with a contractor that the tribes
5 hire and then the bills are forwarded to DM&E or whether or not
6 that's a process that the tribes give input on how they want to
7 see the study conducted and then we ultimately contract with
8 somebody to do the study.

9 MR. HIS HORSE IS THUNDER: You've alluded to the
10 answer that I want, and that's what's budgeted to it?

11 MS. GLIDDEN: Well, I think what Doug was trying to
12 get to was that we're proposing this study, but before we -- you
13 know, Section 106 is a process. And we've developed this work
14 plan to address further work. But it's also a step-by-step
15 process.

16 And so the first thing we have to do is identify
17 what's out there, determine what's eligible, look at the
18 impacts, and then assess effects, and then develop a treatment
19 plan.

20 And this tribal study would be part of that treatment
21 plan as I see it.

22 MR. JACKSON: Yeah. And then with that I don't have a
23 specific carve out within the budget for that one line item. We
24 have an overall budget amount that's set for treatment and
25 mitigation in general.

1 MS. GLIDDEN: You know, we envision, of course, given
2 the number of sites that are out there and the length of this
3 project that there's going to be significant adverse effects to
4 traditional cultural properties and values, but we still need
5 input from you before we can move forward.

6 MR. YOUPEE: On the tribal study itself, you know,
7 that's pretty broad, that paragraph there.

8 MS. GLIDDEN: Curley, I left it broad --

9 MR. YOUPEE: It's broad.

10 MS. GLIDDEN: -- intentionally because I can't tell
11 you what your tribal study's going to be.

12 MR. YOUPEE: Exactly.

13 MS. GLIDDEN: So one of the things we're going to do,
14 we have a Word version of this study. And I guess if there's
15 somebody in your group that has a laptop -- did you get that
16 e-mailed to you?

17 MR. RHODD: It hasn't come through yet.

18 MS. GLIDDEN: So you're going to have a Word version
19 of this, and you can go ahead and put track changes and certain
20 language that you'd like that.

21 MR. YOUPEE: You're talking procedures. All you're
22 doing is adjusting here.

23 MS. GLIDDEN: It's general because it's something that
24 would be developed. In the future there would need to be a
25 scope of work developed, and it's something that --

1 MR. YOUPEE: But I come from the standpoint of dealing
2 with you folks is that we don't get it --

3 Again, Curley Youpee for the Ft. Peck, Assiniboine,
4 Sioux Tribes. My experience here in dealing with you folks is
5 that if we don't get it in writing, then it never happens. We
6 just prolong it over and over and over again, and it never
7 happens.

8 Now we have to go through these exercises regarding
9 the tribal study I feel with the archaeological people because
10 those are your consultants and understanding those areas as they
11 do.

12 In developing this tribal study you're going to have
13 to incorporate some traditional mechanisms of tribes. Okay?
14 And individuals as well from civil tribes to help us with a
15 process itself on what we might want as a tribal study.

16 And collecting resources, finding some synergy for the
17 resources, maintaining informational infrastructure again. It's
18 all necessary. It's structure, infrastructure actually. And
19 right now it's just a paragraph. And I don't see an initiative
20 on behalf of DM&E or Berger and company or yourself even
21 suggesting what that might entail, as we understand it. I know
22 we've talked about this before.

23 MS. GLIDDEN: Well, I think the tribal study in my
24 mind is going to be a comprehensive study, and it would be
25 something that would be done over a period of time that seems to

1 me would be not time dependant and that could continue on even
2 after construction. So it would be a long-term project that
3 would involve, you know, working with tribal elders, doing
4 archival research, a lot of the things that you had mentioned,
5 Curley, in the plan that was drafted in October.

6 You know, ethnographic, research oral histories,
7 perhaps building on the survey data that's collected during a
8 field season. You know, I see it as being kind of a major
9 product, comprehensive document, that would be really important
10 to the tribes because it would have a lot of information that
11 would -- that maybe perhaps isn't out there. So it's an
12 opportunity to encompass the values of the area, rather than
13 doing it in a piecemeal fashion to do it in a wholistic way.

14 MR. YOUPEE: I agree with most of that, but if you
15 have any thoughts of doing that -- if you have any thoughts of
16 doing that or there's some ideas that Berger company has, you
17 know, some templates that we can look at and some budgetaries to
18 make it real, then maybe we can sift through those things. But
19 otherwise we're just spinning our wheels.

20 MS. GLIDDEN: I left it open because I didn't want to
21 be dictorial about that, but we certainly can do that. And if
22 there is any tribal participants here that happen to have
23 templates or documents or anything like that, that would be
24 helpful. But, yeah, we can definitely provide that for you.
25 Would be more than happy to do that.

1 Okay. Anyone else?

2 MR. HIS HORSE IS THUNDER: I'm going to go back to
3 that same point. Murphy's Law is that work expands to fit the
4 time given. Work expands also to fit the budget given. So
5 tribes are going to want to know on this one here -- at least
6 tribal leaders are going to want to know because you're going to
7 have to get the tribal leaders to sign off on this. How much
8 money is in it?

9 There may be an overall budget for the whole -- all
10 the work that needs to be done. We'd like to suggest that a
11 piece of it needs to be carved out for this very nebulous thing
12 called a tribal study.

13 MS. GLIDDEN: We'll take that under advisement and see
14 if we can address that.

15 MR. HIS HORSE IS THUNDER: Something in the
16 neighborhood of not less than \$250,000. It's a comprehensive
17 study.

18 MS. GLIDDEN: Okay.

19 MR. HIS HORSE IS THUNDER: Now another point I'd like
20 to make is this: In the dispute resolution here I see that this
21 committee has one person here, one person here, and three tribal
22 representatives. And you said at least one of those could be
23 Sioux. And so I'm off the top of my head going, well, who are
24 the others that this railroad now cuts through their country
25 that they need to be represented at the table?

1 MS. GLIDDEN: Again, this is open. This is just a
2 suggestion. If you think that there should be -- have a
3 different makeup, that's fine. We can caucus about that and
4 come back and perhaps even insert language in that. Again,
5 we've got that Word file that you're going to be able to go
6 ahead and cut and paste or put in the language that you think is
7 appropriate.

8 MR. HIS HORSE IS THUNDER: Okay.

9 MS. GLIDDEN: Just a suggestion.

10 MR. EAGLE BEAR: I have one more question of you.
11 When we do the tribal study it says it may also serve the
12 traditional mitigation requirements as determined by STB. So
13 what is that --

14 MS. GLIDDEN: I couldn't hear you.

15 MR. EAGLE BEAR: It says on the tribal study -- way on
16 the bottom, the last sentence it says may also serve to achieve
17 additional mitigation requirements as determined by STB.

18 MS. GLIDDEN: That's a very nebulous, very nebulous
19 sentence. You can even feel free to delete that. I mean, yeah.
20 We were thinking I guess that the tribal study would
21 potentially -- because it's going to be all encompassing in a
22 fairly detailed document that that could be one of the
23 mitigation measures to address the overall impacts of the
24 project on the cultural values of the area.

25 And so that's why that language is in there about

1 achieving additional mitigation requirements. But, again, you
2 know, the language here can be modified or changed in a way that
3 you think is appropriate or that would work better for you.

4 MR. EAGLE BEAR: Well, it just raised the price from
5 10 billion to 20 billion.

6 MS. GLIDDEN: I'm not sure what that was or would have
7 meant, but something got in there and had a comment.

8 MR. FISHER: So, in other words, this whole work plan
9 could be changed?

10 MS. GLIDDEN: Well, we hope that, you know, it's going
11 to serve as a very good template. Because I have to tell you I
12 did a lot of the work on it because I really wanted to try to
13 mesh what our goals are and make sure that there wasn't any
14 redundancy and yet we still would get at what everybody wants.

15 And I put my hope that I have done that. But, you
16 know, if there's areas of it that you think need to be worked
17 with or changed, you know, we're open to that.

18 But I think that if you go in there and completely
19 change it, that might not be, you know, what we're looking at.
20 But if there's certain sections that you think should be
21 reworded, you can certainly -- we were hoping that you could do
22 that. But if there's major, major issues with this work plan, I
23 think it would be best to wait until tomorrow to discuss it. I
24 mean, if there's really major issues with it, you just don't
25 think it's workable.

1 MR. FISHER: Well, I thought I heard you say you can
2 change anything you want.

3 MS. GLIDDEN: Well, I mean, within reason.

4 MR. FISHER: Okay.

5 MS. GLIDDEN: All right. Are we ready for the caucus?
6 Any other questions?

7 Okay. Scott.

8 MR. SCOTT JONES: Were you saying that we can develop
9 the budget for the tribal study? Was that your response, that
10 as we define the terms of the tribal study were you affirming
11 that we can be developing a budget to meet those terms that we
12 develop?

13 MS. GLIDDEN: Well, the contracting aspect, the money
14 aspect is stuff that STB doesn't get involved in. So that would
15 be something that would be worked out directly with DM&E.

16 MR. SCOTT JONES: And that would be you two gentlemen?
17 Just you two?

18 MR. HENKE: Well, I got a boss and a --

19 MR. SCOTT JONES: But you would be the contacts.

20 MR. HENKE: Yeah. What I heard from Curley and what I
21 thought Cathy agreed to is I thought we would at least flesh out
22 some type of scope of work and an estimated budget that we would
23 give the them. That's what I thought I heard.

24 MS. GLIDDEN: Yeah. The first thing we have to do is
25 have a scope of work and we have to send that around and

1 everyone has to agree with it. So it's obviously not cart
2 blanche here.

3 MR. SCOTT JONES: Why not?

4 MS. GLIDDEN: I don't have that credit card anymore.

5 MR. EAGLE BEAR: Just like these gentlemen having to
6 answer to their bosses and their board, we have to answer to our
7 tribal government too. And then if we come up with a budget,
8 you know, tribal government might say, hey -- so, I mean, that
9 negotiating that portion we might have to send our leaders to
10 negotiate with his boss and his board.

11 MR. HENKE: Yep. Exactly.

12 MS. GLIDDEN: Again, we're dealing with a process.
13 You know, again, identification is the first part of that. And
14 that's going to take some time to get out -- get the tribes out
15 in the field or to get the tribes the reports and provide
16 feedback. And then we have to determine -- our agency has to
17 determine if these sites are eligible as traditional cultural
18 properties or if they're eligible under other criteria. And
19 then we move forward, you know, with that process. And so it's
20 a bit premature to be talking about, you know, budgets involving
21 the study.

22 MR. EAGLE BEAR: Well, you've got to be realistic, you
23 know, and, you know, certainly down the road if it comes to
24 that, somebody's going to have to cough up some money. And we
25 kind of want to know ahead of time how do we follow that

1 procedure? Who do we negotiate with? What do we do? So I
2 think it's in the back of our minds.

3 MS. GLIDDEN: In terms of the contracting issues.
4 Dave, can you address that, please.

5 MR. SCOTT JONES: And I'd like to finish whenever.

6 MR. EAGLE BEAR: Sorry.

7 MR. BIBLER: That is open. I'm not exactly sure. I
8 think that's a separate issue and probably could be funded
9 through the railroad. I mean, not funded but directly
10 contracted through the railroad.

11 If people aren't comfortable with that, then we'll
12 have to work out a different mechanism, whether it's something
13 like we've done with the tribal monitor contracts. But I don't
14 know.

15 MR. SCOTT JONES: Can I finish, Cathy? For the
16 record, would there be objection to rolling as much of the MOA
17 requirements into this work plan and citing the MOA as well as
18 the P.A. -- the MOA really isn't cited specifically in this work
19 plan. Would there be objection to trying to build a work plan
20 that would meet as much of both as possible?

21 MS. GLIDDEN: I think that is a fantastic idea. And
22 if you could do that, I'd be floating on water.

23 MR. SCOTT JONES: Okay. So let me go back to the
24 budget issue. It seems to me that since the tribes are in the
25 best position to know the kind of work and the costs

1 associated -- you've got several that have been involved in
2 contracts here previously. Should we not in scoping the work,
3 which a work plan basically kind of is, should we not try and
4 have a baseline negotiating point to start with?

5 MS. GLIDDEN: In terms of, you know, the cost of these
6 things?

7 MR. SCOTT JONES: Yeah.

8 MS. GLIDDEN: I really think it's premature.

9 MR. SCOTT JONES: Okay. Thank you for that. Let me
10 just say this: How much does this railroad cost? Is this still
11 a \$2.5 billion railroad project? Is it still -- guys, just
12 ballpark. Is it still a \$2.5 billion railroad project?

13 MR. HENKE: Something slightly less.

14 MR. SCOTT JONES: So we'll say 2 billion maybe.

15 MR. HENKE: 2.2.

16 MR. SCOTT JONES: Usually the Federal Government says
17 2 percent of 2 billion should go to environmental and NHPA and
18 stuff. What's 2 percent of 2 billion? Can you just let me --
19 just follow my logic because I'm speaking to the record. And
20 I'm not trying to pull anything over anybody's eyes.

21 2 percent of 2 billion is what? Can somebody just do
22 the math real quick? Is it 20 million?

23 MR. WHITTED: 40.

24 MR. SCOTT JONES: 40 million, thank you. Now we know
25 that you've had some wonderful, high-tech architectural and

1 engineering firms involved, and we know that they've done some
2 excellent work. And we're not trying to take anything away or
3 hold anyone over a barrel. We're just sitting here simply
4 representing the poorest people in this nation trying to
5 preserve what we can.

6 And you said it earlier. You were quoting Conrad.
7 This is a unique, new way. It's cutting edge, and it is in many
8 respects a pilot project. And you said that you agreed with
9 that. Now I haven't heard the railroads agree with that. But
10 I've heard Kevin say wonderful things in the past.

11 Help us help you do this the way a federal project
12 should be done. And there has been one project that tried that
13 in the past. It was the Mni Wiconi Rural Water Project done by
14 the BOR. And they allowed tribes to set up elder committees.
15 They allowed tribes to get involved in doing the archeology and
16 monitoring work. They allowed tribes to sit down and negotiate
17 agreements. And I can call witness A back there,
18 Mr. Jim Kangas, who was involved in that.

19 This is an enormous project. Enormous. And if we
20 think in terms of the big picture, 2 billion, 2 percent of
21 2 billion, which is kind of standard environmental, cultural,
22 NEPA, whatever, 2 percent is 40 million and we think, okay, we
23 understand that the environmental firms and the big league
24 architects and engineers out there probably need about 30 to
25 32 million of that, we're not talking about much here.

1 We're talking about things like identifying some of
2 the most important areas not just to the Lakota, Dakota, or
3 Nakota. We've got Northern Cheyenne. We've got Mahas
4 (phonetic) here. We've got other tribes. We've got Ho-Chunks.
5 We've got Pawnees. We've got Kiowas. We've got
6 Mandan-Hidatsa-Arikara peoples. We've got Crows. There are
7 many different diverse, unique cultures that are affected by how
8 this project goes forward.

9 And I would just ask -- I won't push the budget issue
10 too much harder, but I would just ask that we do not get caught
11 up in trying to hold the Indians' numbers down. Because we have
12 been a minuscule, minuscule expense. And for someone that sat
13 at the table, not lately granted, but since 1998 my first
14 meeting I went to, Kevin Schieffer was presenting to chairmans
15 at United Sioux Tribes in Pierre, South Dakota. And we have
16 costed literally nothing compared to what's gone out the door.

17 And what a wonderful thing the railroad will be able
18 to uphold to the international community, the international
19 community. This is Canada and the United States involved here.
20 You know, you'll be able to hold up your business ethic to the
21 world. You know, all of these wonderful energy commercials
22 where we have Inuits and people from Nunavut. They show, oh,
23 this is a wonderful pipeline.

24 You can make that P.R. stuff into a reality with this
25 project. And you can help us work with the elders, provide

1 educational tools for the kids, help us carve a little piece out
2 so we can have some economic development, some relief from the
3 hundreds of years of abuse and oppression that I'm not holding
4 you guys necessarily accountable for but I sure would hope that
5 you can help relieve some of that.

6 And there's my spiel right there, Cathy. That's why
7 I'm here today. Because I know how much money's involved. I
8 know how much coal is sitting over there. I know how much more
9 money's going to be made in the future. And you know what I'm
10 banking on? Kevin Schieffer and other businessmen like that who
11 have tried to show a good side and tried to show a little good
12 faith. And I'm not asking for pity. You know, I'm not asking
13 for a handout. Because our people are hard working people.

14 Do we need training and education and re-adjustments?
15 In some cases, yeah. But, you know, the first Americans can for
16 very small price benefit greatly if people will only think out
17 of the box in this circle right here today and tomorrow and over
18 the next course of the next few meetings and look at things a
19 little differently.

20 Thank you.

21 MS. GLIDDEN: Thank you. I really appreciate your
22 words and your input and very thankful that you're here today
23 and you'll be able to be here tomorrow as well.

24 Any other comments before you go into the tribal
25 caucus?

1 MR. EAGLE BEAR: Yeah. I guess before we go into
2 caucus I kind of wanted to hear from the SHPO, the state -- you
3 know, you're involved in this as part of the process -- I guess
4 my question would be to Paige as the SHPO.

5 You're mentioned in this study, and I guess on a State
6 perspective what -- how -- to what extent are you going to be
7 involved in this? I mean, if there's going to be any
8 discussion, you should be out -- the treatment planning, for
9 example, you know, you're mentioned in there slash the tribes.
10 What is your recommendation? What is your thought?

11 I want you to say something controversial so we can
12 discuss it during caucus. Or just being truthful. Maybe that
13 will do it.

14 MS. HOSKINSON OLSON: Okay. Well, I think in terms of
15 the treatment plans, I don't -- you know, I don't know that we
16 can really -- I guess until we know what resources there are, I
17 don't really know how one can develop sort of the treatment
18 plans until we know what we have.

19 So I would -- one thing I would like to say, though,
20 is that I am just a little concerned that we seem to go -- we
21 jump from identification to mitigation and to data recovery and
22 I am a little concerned about that. Because there is, you know,
23 the regulations talk about avoidance, mitigation. We talk about
24 avoidance, minimize, and mitigate adverse effects.

25 And so I would like to see us maybe focus a little

1 more on avoidance or minimizing affects rather than, you know,
2 this sort of full blown data recovery that I keep hearing.

3 MS. GLIDDEN: I'm a little confused about the whole
4 data recovery issue because I don't think that's really been
5 anything that I've discussed.

6 MS. HOSKINSON OLSON: Yeah. I've heard heavy data
7 recovery twice.

8 MR. MENTZ: I brought it up once. Just to make it a
9 point.

10 MS. HOSKINSON OLSON: The DM&E folks brought it up,
11 and I'm a little concerned about that.

12 MS. GLIDDEN: What we're working on right now is this
13 work plan, and the work plan doesn't really I don't think even
14 mention data recovery.

15 MS. HOSKINSON OLSON: Okay. Well, I'm just trying
16 to -- I'm trying to, you know, answer Russell's question. And,
17 you know, again I think it's difficult to come up with, you
18 know, treatment plans when, first, you don't know what you have
19 and --

20 MS. GLIDDEN: We have a process in the -- I don't know
21 if you read this work plan, but it very clearly spells out the
22 process that it would involve first identification -- and I've
23 been stressing this throughout the entire meeting.

24 Number one would be identification. Number two would
25 be determining if those sites are eligible for the National

1 Register. Number three would be assessing effects. And number
2 four would be determining how to treat those sites. And so as
3 far as, you know, mitigation is concerned, one of the
4 possibilities would be data recovery, but it's wide open.
5 It's -- that's what's going to -- that would be what would come
6 out of the treatment plan.

7 Those treatment plans haven't been developed yet.
8 Nobody's talking about data recovery. That might be one of the
9 options or some of the options for some of the sites. But
10 certainly that's a discussion that still is going to be
11 occurring in the future and with your involvement.

12 MR. HIS HORSE IS THUNDER: But I think Paige was
13 making a valid point. The first half of her sentence before she
14 talked about data she made a valid point, though. I'd like to
15 go back to that because that's the point she was really trying
16 to make was the first half of her sentence so if you could
17 continue along that thought, please, Paige.

18 MS. HOSKINSON OLSON: You know, I guess I don't really
19 remember what it was. She cut me off.

20 MR. HIS HORSE IS THUNDER: It was focusing on
21 mitigation rather than --

22 MR. SCOTT JONES: Heavy data recovery.

23 MS. HOSKINSON OLSON: So, first of all, we don't
24 really know what sites we have out there to mitigate, but the
25 regulations talk about avoidance, minimizing, or mitigating

1 effects.

2 And, Cathy, you did, in fact -- you did say when you
3 were describing the process you went -- first thing this morning
4 when you were describing the process you went right from
5 identification to mitigation, and you skipped avoidance and
6 minimizing. And I think that that's really important.

7 MS. GLIDDEN: Thank you. That's a very good point.

8 MS. DESROSIERS: Are you done, Paige?

9 MR. HIS HORSE IS THUNDER: You got us fired up now.

10 MR. SCOTT JONES: But so we will come back to that
11 point? Because, you know, knowing Paige, she doesn't bring
12 those issues up without having given some thought to them. And
13 frankly I got caught up in the flow of the agenda as well. And
14 are we at a point where we know what we can and can't avoid?
15 Are we at that point?

16 MS. GLIDDEN: I just ask that you all read through
17 this work plan very carefully because it really does, I think,
18 try to be flexible in terms of how we're going to go through
19 this process. We need to follow the Section 106 regulations.
20 We need to follow the National Historic Preservation Act.

21 And Section D here we have STB regulatory
22 requirements, makes it clear that that's what we need to do.
23 And in the bullets it talks about all of the different things
24 that we need to do as far as our responsibilities in involving
25 tribes.

1 Identification of historic properties that may be
2 eligible for inclusion in the National Register including
3 properties of traditional, religious, and cultural importance to
4 the tribes.

5 Assessment of the project's effects on national
6 registered eligible or listed properties of traditional,
7 religious, and cultural importance affected tribes.

8 Consultation with the Tribal Historic Preservation
9 Officer or the cultural resources representative as designated
10 by the tribal chairman to determine areas outside the newly
11 acquired right of way where there is the potential of the
12 undertaking to have an adverse effect on historic properties
13 including TCPs.

14 The development of reports that will include a
15 comprehensive records search and literature review, field
16 investigations, and National Register evaluation of historic
17 properties, including TCPs within the A.P.

18 Consultation with the THPO or the cultural research
19 representative designated by the tribe regarding the curation of
20 materials, particularly those collected on state and federal
21 lands.

22 The development of procedures in consultation with the
23 THPOs or the cultural resources representative designated by the
24 tribes regarding the disposition of human remains or funerary
25 items as provided in the discovery clause of the P.A.

1 Completion of sufficient testing as determined by the
2 DM&E project archaeologist, SHPO, Federal agency managing the
3 land, and the Native American monitor on those sites expected to
4 be National Register eligible in order to develop treatment
5 plans whether or not to address adverse effects.

6 Identification of project segments where construction
7 activities must be monitored by tribal representatives to ensure
8 that unanticipated late discoveries of human remains or
9 properties of traditional, religious, and cultural importance
10 are properly reviewed and treated.

11 And compliance with the confidentiality provisions of
12 Section 304 of the NHPA, as amended, and Section 9 of the ARPA
13 and Executive Order On Sacred Sites 13007 FR 61-04.

14 So I apologize if I've appeared to have expressed data
15 recovery. I didn't intend that at all. And what we're looking
16 at is a process and a process of following the Section 106
17 regulations. We're not going to move right to mitigation until
18 we identify and determine the effects. I don't know how that
19 came out, but it just really kind of shocks me to think that
20 that's -- -- that's resulted. I don't know.

21 MR. JACKSON: Cathy, I would like to comment, though.
22 We didn't start this process in October of last year with
23 drawing a line on a map. The EIS evaluated I think somewhere --
24 Mike or Alan, somewhere around 9 or 12 different corridors, and
25 the corridor that was approved and settled on at the direction

1 of the STB also took into account its minimization or its
2 avoidance to cultural resource properties.

3 So there were several. I mean, there were three
4 different corridors and each of those corridors had two to three
5 different alignments in them that were looked at and this one
6 was determined to be the approved corridor because it had less
7 impacts than any of the other eight or 11. So that's one thing.

8 The nature of railroad engineering somewhat limits
9 your ability to avoid within the engineering or geometric
10 principles. And, again, the EIS addresses this. The route was
11 selected both on operational purposes and impacts to the
12 environment. So I don't think -- I mean, and right now where we
13 are in the design, our last option is, to the extent that we
14 can, not to create ourselves any problems with being able to
15 keep the process moving and being able to construct the project.

16 If we can adjust to miss or avoid, we're still going
17 to make those options. At the point where we are right now we
18 don't have the best handle on that until we get a little further
19 into the engineering, until final determinations of eligibility
20 are made.

21 MR. SCOTT JONES: Is all the archeology done?

22 MS. GLIDDEN: No.

23 MR. SCOTT JONES: Okay. The STB knew that. And so
24 there will be a continuance of pedestrian surveys and et cetera,
25 et cetera. And the STB knew that. And they authorized the

1 permit knowing that there was more archeology to be done and
2 that there may be more sites that are come upon. And I don't
3 know if I'm going where you were going, Paige, but I'll just go
4 off on my own tangent anyway.

5 The law says what she said. And I agree with you that
6 there were several routes. There were alternatives, several
7 alternatives, and all of us had the opportunity to comment and
8 et cetera. But the archeology was not done in the new
9 construction. And although somebody's going to say, well, it's
10 dealt with in the P.A., there are also the inadvertent
11 discoveries that will be made as we go through this. And at
12 that time there will be an avoidance -- avoid, minimize, or
13 mitigation decisions made.

14 As you're doing new archeology there may be, depending
15 on the decision of the body politics, there may be an avoid,
16 minimize, or mitigate decision made there on the new archeology.

17 And I think somewhere we're just going to need to meet
18 in the middle here. Because it gets a little confusing. And I
19 understand what Paige was saying, and maybe we can just chew on
20 that and refine that discussion for the morning.

21 MS. GLIDDEN: Sure.

22 MR. SCOTT JONES: I mean, does that make sense?
23 Because I get confused too. And I don't know the law like some
24 of the other tribal reps here. I certainly don't. But I do
25 know the archeology wasn't done. And I do know there are

1 inadvertent things that can happen. And I do know that if
2 you're building a railroad and you hit something that isn't
3 cultural resource related and you say, oh, we've got to move
4 this 20 feet over here and you do move it because of something
5 noncultural resource related and you may hit something cultural
6 resource related, then there will be a whole nother thing going
7 on. I do know that much.

8 But if we can just say that that aspect of the work
9 plan needs to kind of be worked through --

10 MS. GLIDDEN: Sure.

11 MR. SCOTT JONES: All right. For me, that's okay. I
12 don't know about anybody else.

13 MS. GLIDDEN: That's fine. That's a great idea. If
14 there's a lack of clarity in the plan, and I guess there is,
15 then I guess that needs to be inserted.

16 MR. HENKE: Paige directly addressed that. We will
17 start Monday doing a final design. We've finally got to that
18 stage where we're ready to start looking at a final alignment,
19 final profile. We note we've found -- and obviously in the
20 40 miles that haven't been walked yet we don't know what's there
21 so we won't know how to address that until that point.

22 But, I mean, our designers know that we have sites.
23 Inside that -- which is a pretty narrow envelope we're working
24 in -- 600 feet wide roughly, that there's some adjustments that
25 can be made.

1 But as was stated -- because we've had a lot of
2 landowner issues too. Obviously to get a cattle pass in or --
3 every time you pull that alignment here, there's a ripple effect
4 2 miles in each direction. So we do have some latitude. The
5 engineers are well-aware of all the sites that are on the map.
6 We think we know what's significant of those or at least have an
7 idea, and we will address that as we go through this design
8 which starts next week.

9 So at some point when we get further down this process
10 everything defined and somebody says, well, why don't you move
11 it here, well, we looked at that. Here's what we did. Here's
12 how we got there. That's why we are where we are. So we see
13 that analysis. We know it's got to be done. We'll launch into
14 that starting on Monday. It will be two or three months before
15 we can tell you how good we did. But we are starting on that
16 analysis.

17 Where we can steepen a slope up to miss something, to
18 minimize it, that's what we'll do. And those are the kind
19 of efforts we'll start in earnest with this final design.

20 MR. JACKSON: We're in that exact same process with
21 the Corps of Engineers with wetlands areas and screen crossings
22 and where you can adjust we adjust and where you can't because
23 of the engineering commands we have to end up addressing that as
24 far as engineering in the field (Inaudible).

25 MR. EAGLE BEAR: Before these two gentlemen leave, Ben

1 has a question of them so I'll turn this mic over to him.

2 MR. RHODD: Actually we have two concerns that we've
3 been discussing a little bit prior -- well, actually over, well,
4 the last few days here and there.

5 One is I'm glad that this redesign discussion has just
6 been clarified. Because it's interesting that we haven't
7 submitted our reports to the DM&E yet but yet they're already
8 making a decision in a sense of finalizing design. Because
9 there are at least to my mind right now six sites that there is
10 going to have to be, again, minimize, mitigate, identification,
11 whatever. I mean, we're going to have to go through a process
12 here. It's going to take some time.

13 Now and if it's 2 miles in each direction for
14 redesign, then that's going to call for further reevaluation of
15 the corridor. That's one thing. Or if it's already been looked
16 at before, then no problem. Maybe an adjustment can be made on
17 grade and curve.

18 Secondly, we've been wondering about the -- because of
19 the treaty boundaries, the treaty areas over into the Powder
20 River Basin -- and we had an elder with us yesterday who
21 happened -- who claimed and who said he had relationship to
22 Crazy Horse. And we know that the Powder River country Crazy
23 Horse stated many times was his home. He liked that area. That
24 was his home.

25 So there's still yet what is happening in Wyoming.

1 We're wondering about that. Because looking ahead to what will
2 still yet need to be done in the Powder River country as far as
3 the condemnation process, or is there a -- is it stalled?
4 What's going on over there?

5 Because this is another consideration that we're
6 thinking about ahead before we get over there. So we'd like
7 to -- if somebody could answer that at this point so as we take
8 it into caucus we're looking ahead here. Thank you.

9 MR. HENKE: I'm not sure if the exact question is
10 where do we stand in the condemnation process in Wyoming? We
11 had a court date on the 17th and 18th of December that was moved
12 to I think it's -- actually St. Patty's Day, the 17th of March
13 is our cart date for the first condemnation case in Wyoming. It
14 involves two pieces of property out near Black Thunder.

15 And then there's a subsequent hearing date set, and I
16 can't tell you, Ben, exactly what date it is, but it's set for
17 some day in May for all the other condemnation properties in
18 Wyoming.

19 So that's where we stand in the condemnation process
20 in Wyoming. So the court dates are set, and the property being
21 asked for and that's been through discovery and all the other
22 stuff is set on those court cases unless something drastically
23 changes quickly.

24 MR. MADSON: Randy, you may want to comment on your
25 ability to access those properties.

1 MR. HENKE: In Wyoming we went through an access court
2 case in all four counties. We have court-ordered access to
3 those condemned properties. We did the field work. But for us
4 to go back out there there's a very specific procedure,
5 notification ordered by the courts that we have to follow.

6 So, I mean, we can get on all of those properties. We
7 just need to know where it is, how long it's going to take, how
8 many people we're going to take, and be pretty specific
9 following the court order of how we go and notify those people
10 we're going to go on their property to do some additional
11 survey.

12 We have the right to go do it, and it's court ordered.
13 And I think it's on 18 properties or 19 properties in Wyoming.
14 The rest -- we have access to every property in Wyoming either
15 through court order or through agreement, and they each take a
16 different way to get on them. So once we get ready to go in the
17 field, I think that's part of the work plan, is to give us two
18 weeks' notice so we can work with the landowners, work through
19 the court process, so we can get the access to actually go do
20 it.

21 MR. EAGLE BEAR: What about around the Black Hills
22 area? Last report you had some agreement and not an agreement.

23 MR. HENKE: In South Dakota there's approximately
24 40 miles of the alignment -- there's 140 approximately miles of
25 route in South Dakota. 40 miles of that we do not have access

1 to get on, we have not surveyed, approximately.

2 So if we want to go do -- if you ask to go do
3 surveys -- well, first of all, there won't be a report given to
4 you to look at because we haven't surveyed it yet. The only
5 reports that will get produced, correct me if I'm wrong, Mike,
6 is ones we have actually done the work on.

7 MR. MADSON: There is one exception where a survey was
8 done six years ago, and since then access has been pulled.

9 MR. HENKE: There's about 40 miles in South Dakota
10 where we cannot get on today. We are in the process right now
11 trying to work through the Transportation Commission to get
12 authority to use condemnation in the State of South Dakota. If
13 we get authority to use the condemnation case, we then can go to
14 court and ask for access. But that has not been approved yet.
15 We expect that over the next several months. But I don't have a
16 timetable for it.

17 Another example, Forest Service. We have a
18 procedure if we're going to go on Forest Service land. We have
19 a procedure if we're going to go on Bureau of Rec. Land. So
20 there's a procedure for each one of these we have to follow.
21 The owners have to comply with what we've agreed to do.

22 MR. WITHROW: I guess I'd like to say a word or two.
23 Just sitting here listening to a lot of the discussion, it's
24 quite clear that any consideration of treatment at this stage of
25 the game is really difficult to do. I mean, it's a difficult

1 topic to begin with. Add to that the fact we still don't know
2 completely what is out there and what needs to be treated.

3 And this plan that we've asked the tribal reps here to
4 consider is a proposal. It is a proposal for completing that
5 identification process. And the field reviews that are outlined
6 in there as well as the tribal study that's outlined there are
7 ways, possible ways, of doing that, in completing that process.

8 But the discussion about mitigation or finding ways to
9 avoid and minimize important places, this is a discussion that
10 will have to take place, but we're not there yet in a lot of
11 ways. We still have a lot of work to do.

12 And I guess I'm getting a little concerned about
13 cutting into the time that we've reserved for tribes to caucus
14 this afternoon. I'd like to see if we could move to that.

15 MR. FISHER: I just had one comment on a couple of
16 things. One, the work plan. I think, you know, it says tribal
17 involvement. Work plan and tribal involvement. And to me that
18 implies that we can manipulate, delete, do a lot of things with
19 this work plan. And you mentioned within reason.

20 So, you know, we could recommend I think on here
21 personally some of the things that we'd like to see in this work
22 plan.

23 MS. GLIDDEN: Absolutely.

24 MR. FISHER: Budget included in here.

25 MS. GLIDDEN: Sure. It's a proposal. It's a draft

1 work plan. It's something that we can talk about.

2 MR. FISHER: Okay. I just wanted to make that clear.

3 MS. GLIDDEN: Yes.

4 MR. FISHER: The other thing is, you know, somebody
5 mentioned conspiracy this morning saying this wasn't a
6 conspiracy theory. But if you really look at the larger
7 picture, this is called the Powder River Basin Project. And
8 there's a lot of coal bed methane development going on in
9 northeastern Wyoming and also a lot of coal mining. But also in
10 addition there's a lot of that going on in southeastern Montana.
11 And we're fighting on an uphill battle with the Tongue River
12 Railroad Company near the Northern Cheyenne Reservation.

13 So the -- you know, if you look at the larger picture,
14 this rail line is actually moving towards my hometown, my home
15 reservation, along the Tongue River Basin area. So when
16 somebody mentioned conspiracy immediately I thought of that line
17 connecting to our reservation.

18 So in a sense I feel it is a conspiracy personally
19 because maybe not in my lifetime but sooner or later that rail's
20 going to connect to southeastern Montana. And we've got a huge,
21 huge power point in Colstrip, Montana near the reservation, and
22 I wouldn't be surprised if that eventually hooks up to that.
23 That's all.

24 MR. MENTZ: A question, rather, was posed regarding
25 condemnation. Who would control disposition of inadvertent

1 discoveries -- who would control disposition of inadvertent
2 discoveries or associated funerary objects that may be located
3 in an area that you simply have to take out?

4 Would it be State law that would control disposition?
5 Because I'm assuming -- let's take, for instance, it's on
6 private lands. You're condemning it. This landowner doesn't
7 want probably to go through, but nevertheless you condemned his
8 land. Where does that put the status? What's the control
9 status of disposition with those types of items that could be
10 found there?

11 MS. GLIDDEN: Paige, did you want to speak to that?

12 MS. HOSKINSON OLSON: I don't think so.

13 MR. MENTZ: Well, I'm asking STB because you're the
14 lead agency.

15 MS. GLIDDEN: Yeah. We have federal laws that address
16 funerary items on federal lands, and that includes the Native
17 American Graves Protection and Repatriation Act. And also some
18 states have state laws that address burials even on private
19 lands. And I'm not sure to be perfectly honest of the laws, of
20 the state laws for South Dakota or Wyoming or Minnesota.

21 MS. HOSKINSON OLSON: There's a state burial law in
22 South Dakota.

23 MR. MENTZ: Well, I was kind of primarily concerned
24 with Wyoming. And I don't know the state law in Wyoming,
25 whether it even has conformity to the NAGPRA law.

1 And my second question to that then would be if it's
2 using state law to condemn, what authority do you have to place
3 over these items that potentially could be a NAGPRA item and a
4 NAGPRA situation?

5 Because this is being basically permit approval by
6 STB, and you have to consider those types of issues when there's
7 a split estate issue. So, again, I'm asking you is what type of
8 influence are you going to use as the lead federal agency to
9 keep it federal, where disposition is kept federal?

10 And a leadoff question to that I wanted to get to to
11 begin with was what's -- when DM&E condemns that land are they
12 doing it in a sense of controlling only the easement and the
13 right of way and they have no -- I guess no -- they don't want
14 nothing to do with what's being found there, I guess? Or is it
15 going to be that DM&E is going to be the controlling factor on
16 disposition and they will determine what happens with
17 inadvertent discoveries?

18 Sorry. There's a few questions there. Sorry.

19 MS. GLIDDEN: The question of inadvertent discoveries
20 is included in a provision in the Programmatic Agreement. It
21 lays out the exact process that would occur in the event. And I
22 think if you --

23 MR. MENTZ: No. I seen that, and I do see you
24 reference NAGPRA. But that's not my question. My question is
25 on the condemnation when you're using state law.

1 MS. GLIDDEN: I really can't speak to condemnation
2 because that's not something the Board actually does. It's done
3 on a state level so perhaps DM&E could talk about condemnation.

4 MR. HENKE: I'm not a lawyer, don't ever want to be
5 one -- sorry, Chase -- so if I say something wrong, don't hold
6 me to it. We are in Federal Court for condemnation in Wyoming.
7 So the condemnation process is not in State Court. It's in
8 Federal Court in Wyoming. So I don't know if that answers the
9 question or not.

10 But when you condemn in Wyoming you can only condemn
11 for easement, and I believe the judge has the discretion as to
12 what he does with the underlying properties.

13 So, again, not being a lawyer, I can't answer that
14 question. But we're in Federal Court, which again I think
15 brings it to a federal level, and we can only condemn for
16 easements. So in Wyoming the properties we condemn will only
17 have an easement across those properties. It will still be the
18 underlying landowner on that property?

19 MR. MENTZ: So he would have control --

20 MR. HENKE: I don't know how that works. I get lost
21 beyond what I said.

22 MR. IRON EYES: Chase Iron Eyes from Standing Rock
23 Sioux Tribe. Along those same lines, not the same scope but the
24 same legal framework, I think I would like and I think our
25 tribes can benefit from some sort of legal road map or a

1 flowchart that lays out our contingencies and, you know, what
2 would happen to us as signatory tribes as well as nonsignatory
3 tribes.

4 And I don't know if this has been done by Arcans
5 (phonetic) or some other party such as DM&E or STB or, you know,
6 et cetera, whatnot. But I think we need to get that -- those
7 possibilities in line so we can be better informed in making
8 informed decisions.

9 Just looking at these dispute resolution clauses and
10 these different documents, the MOA and the work plan, I don't
11 really -- I'm unclear as to the proposed scope of authority of
12 each dispute resolution clause. And we need to -- that's very
13 important from the legal standpoint.

14 And all lawyers aren't scoundrels, I guess.

15 MR. HENKE: I didn't say you're scoundrels. Scoundrel
16 never came up.

17 MR. RHODD: I do have some concern on this because I'm
18 thinking -- I've been working over in the coal bed methane
19 fields. And Alice might have to be the one that answers here a
20 little bit because -- let me ask a question engineeringwise.

21 On a relatively flat surface how deep do you go?
22 Would you go with a track that borrowed to bring the center to
23 grade or whatever?

24 MR. HENKE: If we're building a railroad across the
25 table top, it would be 4 feet in the air.

1 MR. RHODD: So that means 4 feet deep of borrow on
2 each side?

3 MR. HENKE: Well, some way you've got to deal with
4 drainage. Drainage is an issue. Dealing with the drainage is
5 probably more important than where you actually put the track.
6 So how you get the water away from it is important.

7 MR. RHODD: Right. Something just hit me as Chase was
8 talking. You know, when we're looking at the coal bed methane
9 area and the private ownership that has been basically taken
10 away from the landowners there to a degree and BLM has
11 subsurface mineral rights under law so something just hit me.
12 What is this? What happens to let's say inadvertent discovery
13 remains? Are they actually part of the BLM responsibility?

14 So that gets at NAGPRA. And maybe I'm reaching here.
15 I don't know. It just -- all of a sudden I just got to
16 thinking, wait a minute, how do we deal with this? Surface
17 Transportation Board is the lead federal agency. This is a
18 federally led or guided project. So does it take on a legal
19 responsibility or a legal -- yeah, responsibility so that NAGPRA
20 stays in effect in a sense on condemned lands or purchased lands
21 or whatever?

22 I don't know. I'm not a lawyer. I might be a
23 scoundrel but -- I'm not a lawyer. Got to get some laughter in
24 here. It's getting too serious. No.

25 All the sudden it just kind of popped in what is this,

1 you know? What are we actually dealing with over there? And
2 particularly those BLM subsurface-righted lands.

3 So anyway thank you.

4 MR. HIS HORSE IS THUNDER: One final comment before we
5 go to break and the caucus, is listening to words thrown around
6 such as final design and condemnation and court-ordered access
7 really drives home why we use the term railroaded. Just a
8 comment. Just a comment.

9 MR. WITHROW: We'll take a break, and you guys will
10 reconvene.

11 (The proceedings are in recess at 3:25 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF HUGHES)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered Professional
6 Reporter, Certified Realtime Reporter and Notary Public in and
7 for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed shorthand
9 reporter, I took in shorthand the proceedings had in the
10 above-entitled matter on the 15th day of January, 2008, and that
11 the attached is a true and correct transcription of the
12 proceedings so taken.

13 Dated at Pierre, South Dakota this 29th day of
14 January, 2008.

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16

17

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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\$	18 ^[1] - 140:13 1800s ^[1] - 54:24 18th ^[1] - 139:11 19 ^[1] - 140:13 1962 ^[1] - 20:23 1965 ^[1] - 22:12 1998 ^[3] - 6:17, 25:18, 126:13 1999 ^[6] - 6:17, 11:19, 14:8, 93:21, 93:25, 94:2	4	ability ^[6] - 66:4, 92:3, 101:18, 111:9, 134:9, 139:25 able ^[29] - 12:5, 19:2, 27:2, 31:24, 35:12, 44:1, 47:12, 49:10, 51:16, 61:20, 61:21, 62:2, 62:12, 71:7, 74:15, 76:11, 86:24, 88:3, 92:20, 110:4, 110:24, 111:14, 119:5, 126:17, 126:20, 127:23, 134:14, 134:15 aboriginal ^[1] - 80:6 above-entitled ^[1] - 150:10 Absolutely ^[1] - 142:23 absolutely ^[1] - 45:12 abuse ^[1] - 127:3 academic ^[1] - 78:7 acceptable ^[1] - 91:22 access ^[11] - 35:25, 62:2, 139:25, 140:1, 140:2, 140:14, 140:19, 140:25, 141:8, 141:14, 149:6 accommodate ^[1] - 102:21 accompanied ^[1] - 99:12 accomplish ^[1] - 110:22 accomplished ^[1] - 111:7 accordance ^[2] - 94:11, 96:25 account ^[3] - 65:24, 101:3, 134:1 accountable ^[1] - 127:4 accounts ^[1] - 104:11 accurate ^[1] - 73:22 achieve ^[1] - 119:16 achieved ^[1] - 24:20 achieving ^[1] - 120:1 acquired ^[1] - 132:11 acres ^[1] - 17:21 Act ^[5] - 24:14, 29:11, 98:3, 131:20, 144:17 acting ^[1] - 18:16 actions ^[1] - 99:14 active ^[4] - 63:23, 64:7, 65:5, 102:3 actively ^[3] - 65:1, 65:2, 65:4 activities ^[5] - 9:20, 28:9, 34:4, 64:1, 133:7	activity ^[2] - 37:5, 37:13 actual ^[4] - 34:4, 39:12, 47:10, 88:17 actuality ^[1] - 106:1 add ^[5] - 62:15, 62:16, 66:20, 93:13, 110:17 Add ^[1] - 142:1 added ^[2] - 59:24, 67:4 addition ^[6] - 32:13, 32:24, 33:4, 34:2, 53:11, 143:10 additional ^[5] - 40:22, 110:12, 119:17, 120:1, 140:10 additionally ^[1] - 40:25 address ^[42] - 11:14, 33:25, 34:18, 36:7, 38:6, 48:24, 49:10, 49:17, 50:2, 55:2, 55:9, 68:21, 69:20, 70:18, 71:5, 71:10, 74:12, 74:23, 78:14, 78:20, 79:16, 83:2, 84:25, 90:17, 91:6, 95:19, 96:22, 101:15, 112:23, 113:3, 113:11, 113:22, 114:14, 118:14, 119:23, 123:4, 133:5, 136:21, 137:7, 144:15, 144:18 addressed ^[12] - 11:17, 36:12, 75:16, 76:20, 90:12, 90:21, 90:25, 92:6, 92:8, 97:18, 105:10, 136:16 addresses ^[3] - 61:16, 101:13, 134:10 addressing ^[4] - 37:8, 75:17, 78:18, 137:23 adequate ^[2] - 47:17, 81:16 adhere ^[2] - 110:20 adjust ^[3] - 134:16, 137:22 adjusting ^[1] - 115:22 adjustment ^[2] - 33:2, 138:16 adjustments ^[2] - 127:14, 136:24 administrative ^[1] - 28:3 administrator ^[1] - 71:25 advantage ^[1] - 14:21
1	2	5		
1 ^[1] - 61:15 1,000 ^[2] - 42:21, 42:23 10 ^[12] - 7:15, 8:1, 12:2, 35:16, 39:16, 40:4, 40:23, 41:21, 41:23, 55:18, 86:14, 120:5 106 ^[40] - 5:20, 6:3, 6:19, 6:24, 7:5, 12:16, 16:1, 17:11, 19:15, 19:19, 19:22, 24:14, 25:6, 27:1, 29:10, 30:8, 39:7, 42:11, 44:9, 45:16, 45:17, 46:7, 46:11, 48:18, 50:17, 50:21, 52:8, 52:10, 52:13, 56:7, 63:10, 82:22, 84:4, 95:23, 96:8, 110:22, 114:13, 131:19, 133:16 107 ^[2] - 16:1, 76:5 10:15 ^[1] - 26:10 10:30 ^[1] - 26:10 10th ^[1] - 22:20 11 ^[2] - 28:21, 134:7 110 ^[1] - 95:24 12 ^[5] - 22:15, 26:10, 26:13, 68:25, 133:24 12th ^[1] - 22:19 13 ^[3] - 61:1, 63:22, 94:8 13007 ^[1] - 133:13 140 ^[1] - 140:24 147 ^[3] - 10:5, 84:14, 110:16 15 ^[7] - 1:5, 40:16, 41:10, 41:21, 41:23, 42:13, 59:7 15-minute ^[1] - 26:5 150 ^[2] - 44:5, 54:21 15th ^[2] - 3:3, 150:10 17th ^[2] - 139:11, 139:12	2 ^[15] - 33:3, 112:10, 124:14, 124:17, 124:18, 124:21, 125:20, 125:21, 125:22, 137:4, 138:13 2.2 ^[1] - 124:15 2.5 ^[2] - 124:11, 124:12 20 ^[4] - 59:6, 120:5, 124:22, 136:4 2000 ^[1] - 9:7 2001 ^[1] - 9:7 2002 ^[1] - 9:8 2003 ^[1] - 9:9 2005 ^[1] - 9:12 2006 ^[5] - 9:13, 9:15, 9:19, 9:22, 25:5 2007 ^[1] - 46:20 2008 ^[9] - 1:5, 3:3, 4:24, 15:17, 28:16, 93:25, 111:8, 150:10, 150:14 2011 ^[1] - 38:17 25 ^[1] - 103:11 27 ^[2] - 59:6, 94:8 29 ^[1] - 17:24 29th ^[1] - 150:13	5 ^[5] - 12:1, 43:15, 70:10, 101:5, 112:20 50 ^[1] - 43:19 6 6 ^[5] - 40:23, 63:22, 97:20, 113:2 6-9-05 ^[1] - 67:5 600 ^[1] - 136:24 61-04 ^[1] - 133:13 68 ^[1] - 41:2 7 7 ^[1] - 94:9 8 8 ^[1] - 22:11 80 ^[2] - 43:20, 44:3 800 ^[2] - 5:19 800.14 ^[2] - 94:11, 96:25 9 9 ^[6] - 28:21, 30:21, 31:4, 68:25, 133:12, 133:24 90 ^[1] - 44:3 95 ^[1] - 9:10 9:10 ^[2] - 1:6, 3:3 9:30 ^[1] - 26:10 A a.m ^[2] - 1:6, 3:3 A.P ^[1] - 132:17 abandon ^[1] - 12:21 abilities ^[1] - 66:5		

<p>adverse [9] - 37:25, 38:6, 70:18, 71:9, 74:23, 115:3, 128:24, 132:12, 133:5</p> <p>advice [1] - 24:11</p> <p>advisement [1] - 118:13</p> <p>Advisory [2] - 24:6, 24:7</p> <p>advocate [5] - 18:7, 93:16, 94:23, 97:21</p> <p>advocates [1] - 97:22</p> <p>affairs [2] - 7:12, 7:17</p> <p>Affairs [1] - 7:17</p> <p>affect [4] - 6:8, 51:24, 111:9</p> <p>affected [6] - 58:16, 58:20, 59:14, 68:11, 126:7, 132:7</p> <p>affects [1] - 129:1</p> <p>Affiliated [2] - 1:14, 25:9</p> <p>affirming [1] - 121:10</p> <p>afternoon [4] - 47:22, 52:9, 79:24, 142:14</p> <p>agencies [9] - 54:22, 64:2, 81:10, 93:3, 93:5, 93:7, 93:10, 94:12, 110:18</p> <p>agency [17] - 4:4, 15:14, 25:19, 27:2, 29:8, 32:19, 54:21, 81:10, 97:24, 98:5, 98:10, 110:16, 122:16, 133:2, 144:14, 145:8, 148:17</p> <p>agenda [7] - 26:9, 26:14, 48:22, 63:4, 68:23, 69:23, 131:13</p> <p>ago [8] - 7:3, 7:18, 8:1, 8:24, 18:19, 23:11, 94:23, 141:8</p> <p>agree [12] - 68:17, 76:1, 80:15, 82:8, 82:15, 83:20, 83:24, 85:3, 117:14, 122:1, 125:9, 135:5</p> <p>agreed [6] - 4:9, 13:10, 68:9, 121:21, 125:8, 141:21</p> <p>agreeing [1] - 106:2</p> <p>agreement [12] - 13:18, 15:3, 16:3, 61:18, 62:9, 62:12, 94:9, 95:11, 97:3, 140:15, 140:22</p> <p>Agreement [15] - 10:1, 10:2, 10:3, 10:7,</p>	<p>12:12, 12:15, 12:16, 25:20, 29:9, 67:16, 93:1, 93:2, 93:4, 145:20</p> <p>agreements [3] - 59:16, 95:5, 125:17</p> <p>ahead [16] - 23:12, 28:15, 59:19, 62:3, 66:21, 68:17, 69:24, 98:22, 107:23, 112:17, 115:19, 119:6, 122:25, 139:1, 139:6, 139:8</p> <p>air [1] - 147:25</p> <p>Alan [4] - 1:12, 24:3, 24:4, 133:24</p> <p>Alice [3] - 2:4, 13:20, 147:19</p> <p>alignment [4] - 73:2, 136:18, 137:3, 140:24</p> <p>alignments [1] - 134:5</p> <p>Allen [2] - 1:22, 18:14</p> <p>ALLEN [1] - 18:14</p> <p>alleviating [1] - 84:2</p> <p>allow [5] - 27:19, 51:13, 74:1, 94:25, 98:10</p> <p>allowed [4] - 93:11, 125:14, 125:15, 125:16</p> <p>alluded [1] - 114:9</p> <p>alluding [1] - 114:2</p> <p>almost [2] - 58:4, 73:5</p> <p>alone [3] - 31:25, 33:6, 98:17</p> <p>alternative [3] - 8:8, 27:21, 35:22</p> <p>alternatives [3] - 71:3, 135:6, 135:7</p> <p>Ambrose [6] - 2:2, 20:7, 22:4, 22:9, 22:12, 109:8</p> <p>Amen [2] - 2:4, 16:16</p> <p>amend [2] - 16:8, 93:24</p> <p>amended [5] - 94:10, 94:20, 96:24, 97:13, 133:12</p> <p>amendment [6] - 94:8, 94:12, 94:19, 96:23, 96:24, 97:1</p> <p>amendments [3] - 97:4, 97:5, 97:7</p> <p>American [7] - 28:6, 64:6, 64:14, 66:24, 67:2, 133:3, 144:17</p> <p>American-Indian [4] - 64:6, 64:14, 66:24, 67:2</p>	<p>Americans [2] - 28:4, 127:15</p> <p>amount [3] - 39:24, 39:25, 114:24</p> <p>amounts [2] - 74:2, 79:3</p> <p>ample [2] - 47:23, 94:2</p> <p>analysis [3] - 33:4, 137:13, 137:16</p> <p>analyst [1] - 24:10</p> <p>ancestors [2] - 19:16, 21:24</p> <p>ancestors' [1] - 22:8</p> <p>ancestral [2] - 22:1, 80:7</p> <p>angle [1] - 5:11</p> <p>Angostura [1] - 41:6</p> <p>anniversary [1] - 22:11</p> <p>answer [14] - 7:11, 49:20, 50:1, 50:11, 73:16, 74:17, 109:13, 113:24, 114:10, 122:6, 129:16, 139:7, 146:13</p> <p>answers [5] - 49:13, 52:14, 109:17, 146:8, 147:19</p> <p>ant [1] - 6:12</p> <p>anticipate [1] - 47:1</p> <p>anticipated [1] - 33:11</p> <p>anticipating [1] - 48:24</p> <p>anyway [9] - 12:3, 16:10, 26:14, 28:14, 38:9, 54:5, 66:12, 135:4, 149:3</p> <p>Anyway [2] - 52:21, 58:8</p> <p>apart [1] - 94:3</p> <p>apologize [3] - 12:4, 58:4, 133:14</p> <p>Appeals [1] - 9:15</p> <p>appeared [1] - 133:14</p> <p>Appendix [3] - 59:7, 67:4, 94:9</p> <p>applicable [2] - 51:2, 110:18</p> <p>applicant [1] - 50:8</p> <p>applied [1] - 8:2</p> <p>apply [1] - 98:18</p> <p>applying [1] - 93:21</p> <p>appointed [1] - 150:8</p> <p>appreciate [8] - 10:15, 16:10, 26:7, 80:15, 86:11, 92:22, 113:9, 127:21</p> <p>approach [6] - 74:11, 82:8, 84:13, 85:3,</p>	<p>85:19, 89:8</p> <p>approached [2] - 70:16, 98:11</p> <p>approaches [2] - 36:3, 36:15</p> <p>appropriate [11] - 36:13, 38:1, 52:12, 58:17, 58:19, 59:14, 63:18, 64:2, 68:11, 119:7, 120:3</p> <p>approval [2] - 9:8, 145:5</p> <p>approved [6] - 15:15, 72:11, 73:11, 133:25, 134:6, 141:14</p> <p>aptitude [1] - 44:23</p> <p>Arapaho [2] - 1:15, 19:18</p> <p>arc [5] - 87:6, 87:18, 88:22, 88:23, 89:5</p> <p>Arcans [1] - 147:4</p> <p>archaeological [20] - 17:18, 17:22, 23:13, 23:24, 25:7, 26:18, 27:9, 29:22, 29:25, 30:2, 31:13, 32:12, 34:14, 34:16, 88:20, 110:23, 112:6, 116:9</p> <p>archaeologist [1] - 133:2</p> <p>archeological [1] - 99:13</p> <p>Archeologist [1] - 13:16</p> <p>archeologist [8] - 6:14, 15:5, 15:20, 23:3, 25:4, 25:18, 76:22, 90:6</p> <p>archeologists [8] - 20:24, 22:13, 50:23, 51:12, 71:13, 99:13, 106:11, 110:1</p> <p>archeology [11] - 15:18, 22:5, 22:12, 23:5, 125:15, 134:21, 135:1, 135:8, 135:14, 135:16, 135:25</p> <p>architect [1] - 61:12</p> <p>architects [1] - 125:24</p> <p>architectural [1] - 124:25</p> <p>archival [3] - 27:8, 33:13, 117:4</p> <p>area [29] - 6:6, 7:15, 15:7, 23:4, 33:2, 33:19, 33:21, 33:24, 34:18, 34:22, 35:12, 40:15, 40:20, 42:24,</p>	<p>52:5, 73:7, 73:9, 73:15, 75:14, 82:4, 87:6, 98:13, 117:12, 119:24, 138:23, 140:22, 143:15, 144:3, 148:9</p> <p>Area [1] - 25:17</p> <p>areas [24] - 33:11, 40:22, 42:14, 51:5, 73:2, 77:16, 78:3, 78:4, 79:22, 81:25, 82:3, 82:5, 82:7, 82:24, 82:25, 85:10, 89:6, 111:25, 116:10, 120:16, 126:2, 132:10, 137:21, 138:19</p> <p>Argentina [1] - 14:4</p> <p>argued [1] - 96:18</p> <p>arguing [1] - 96:18</p> <p>argument [4] - 48:17, 52:1, 52:5, 59:18</p> <p>arguments [3] - 49:11, 51:14, 95:23</p> <p>Arikara [1] - 126:6</p> <p>arise [1] - 99:23</p> <p>army [1] - 21:1</p> <p>ARPA [2] - 98:3, 133:12</p> <p>artifacts [3] - 14:17, 21:1, 72:19</p> <p>aspect [10] - 5:11, 16:1, 36:9, 48:7, 91:2, 112:2, 112:21, 121:13, 121:14, 136:8</p> <p>aspects [7] - 35:10, 35:14, 35:18, 36:20, 48:13, 103:18, 113:21</p> <p>assess [2] - 33:10, 114:18</p> <p>assessing [1] - 130:1</p> <p>assessment [1] - 30:4</p> <p>Assessment [1] - 132:5</p> <p>Assiniboine [3] - 1:14, 13:25, 116:3</p> <p>assist [6] - 15:10, 16:18, 27:25, 53:23, 55:14, 84:6</p> <p>assistance [2] - 15:8, 29:3</p> <p>Assistant [1] - 7:16</p> <p>assistants [1] - 108:23</p> <p>assisting [1] - 31:11</p> <p>associated [2] - 124:1, 144:2</p> <p>assuming [5] - 7:21, 48:15, 70:7, 70:12,</p>
---	---	---	---	---

<p>144:5 atmosphere [1] - 108:22 attached [1] - 150:11 attempt [1] - 99:23 attempting [1] - 111:3 attend [1] - 20:8 attended [1] - 67:16 attending [2] - 25:18, 25:23 attention [1] - 91:7 August [1] - 9:22 authored [1] - 12:8 authority [12] - 8:2, 9:18, 50:7, 64:3, 69:6, 90:8, 97:25, 98:5, 141:12, 141:13, 145:2, 147:11 authorized [1] - 134:25 authorizing [1] - 8:15 available [5] - 8:8, 10:14, 38:14, 44:11, 65:3 avenue [1] - 84:2 avoid [8] - 71:7, 76:14, 131:14, 134:9, 134:16, 135:12, 135:15, 142:9 avoidance [7] - 128:23, 128:24, 129:1, 130:25, 131:5, 134:2, 135:12 avoided [7] - 70:15, 70:18, 70:24, 71:22, 72:6, 75:12, 75:18 aware [3] - 93:22, 103:16, 137:5 awareness [1] - 87:2 awesome [2] - 18:2 awful [1] - 30:23</p>	<p>43:15, 102:17 based [8] - 8:24, 15:6, 38:24, 43:18, 44:1, 46:24, 71:4, 92:3 baseline [1] - 124:4 basic [7] - 31:6, 49:4, 66:7, 66:8, 95:15 Basin [6] - 8:7, 8:9, 20:4, 138:20, 143:7, 143:15 basis [1] - 60:6 basting [1] - 14:4 battle [2] - 93:14, 143:11 BEAR [23] - 6:22, 69:4, 70:5, 70:11, 70:23, 71:20, 72:5, 73:24, 91:10, 91:15, 92:7, 92:10, 92:13, 107:16, 119:10, 119:15, 120:4, 122:5, 122:22, 123:6, 128:1, 137:25, 140:21 Bear [3] - 2:6, 6:22, 20:24 bearing [1] - 77:23 beat [1] - 36:23 became [2] - 18:19, 24:24 become [5] - 44:23, 64:13, 65:6, 93:15, 98:12 bed [4] - 39:20, 143:8, 147:18, 148:8 begin [6] - 30:19, 31:12, 31:17, 31:20, 142:1, 145:11 beginning [3] - 84:15, 93:7, 113:12 behalf [2] - 54:11, 116:20 behavior [1] - 91:22 behind [2] - 26:8, 108:8 belabor [2] - 66:13, 79:23 belief [1] - 86:21 beliefs [1] - 87:2 believes [1] - 36:13 belittled [1] - 95:1 belts [1] - 66:1 Ben [6] - 2:6, 6:14, 106:23, 107:10, 137:25, 139:16 beneficial [1] - 35:13 benefit [2] - 127:16, 146:25 benefiting [2] - 57:20, 57:22</p>	<p>Berger [27] - 1:10, 1:10, 15:6, 16:14, 50:6, 52:11, 52:18, 53:4, 53:12, 53:15, 53:22, 54:3, 54:8, 55:24, 56:3, 56:16, 57:15, 86:24, 99:6, 100:25, 103:24, 103:25, 104:6, 105:13, 105:17, 116:20, 117:16 Berger's [2] - 52:24, 53:1 best [11] - 36:15, 42:9, 72:23, 73:20, 81:22, 100:23, 102:22, 110:20, 120:23, 123:25, 134:18 better [8] - 21:11, 78:14, 80:3, 97:13, 101:13, 104:1, 120:3, 147:7 between [15] - 14:19, 20:18, 39:16, 40:4, 40:23, 41:9, 52:17, 56:1, 58:19, 68:25, 73:2, 86:8, 93:2, 93:5, 96:9 beyond [2] - 38:12, 146:21 Bible [1] - 21:15 Bibler [4] - 1:10, 16:13, 92:18, 98:23 BIBLER [24] - 16:13, 52:6, 98:23, 102:9, 103:5, 103:10, 103:25, 104:4, 104:8, 104:15, 104:21, 105:8, 105:14, 105:21, 106:16, 106:23, 107:10, 107:12, 107:15, 107:18, 107:21, 108:25, 111:19, 123:7 big [7] - 62:5, 66:22, 102:6, 102:7, 106:12, 125:20, 125:23 bigger [1] - 13:4 biggest [5] - 81:9, 99:25, 100:6, 100:13, 100:16 bill [1] - 110:3 Billings [1] - 13:15 billion [14] - 74:2, 74:4, 74:17, 75:2, 120:5, 124:11, 124:12, 124:14, 124:17, 124:18,</p>	<p>124:21, 125:20, 125:21 bills [1] - 114:5 binding [2] - 20:18, 61:17 bit [28] - 4:19, 7:24, 9:6, 35:5, 35:6, 35:9, 36:17, 38:12, 38:13, 38:19, 45:15, 45:19, 45:24, 52:15, 58:11, 75:4, 78:22, 88:10, 89:16, 92:18, 108:6, 109:1, 109:6, 110:9, 122:20, 138:3, 147:20 black [1] - 109:15 Black [9] - 8:10, 8:11, 8:16, 8:17, 43:15, 73:9, 139:14, 140:21 blah [3] - 68:6 blah-blah-blah [1] - 68:6 blanche [1] - 122:2 blank [1] - 58:15 BLM [5] - 1:17, 2:4, 148:10, 148:13, 149:2 blocks [1] - 66:22 blow [1] - 82:11 blown [1] - 129:2 BOARD [1] - 1:1 board [7] - 5:8, 7:19, 62:16, 66:20, 70:3, 122:6, 122:10 Board [15] - 1:9, 3:2, 4:4, 8:13, 15:8, 15:14, 15:23, 49:1, 52:18, 52:22, 53:17, 53:23, 55:5, 146:2, 148:17 body [1] - 135:15 boiler [1] - 28:18 BOR [1] - 125:14 borrow [1] - 148:1 borrowed [1] - 147:22 boss [2] - 121:18, 122:10 bosses [1] - 122:6 botanical [1] - 112:14 bottom [4] - 36:8, 85:25, 90:22, 119:16 bouncing [1] - 77:19 boundaries [1] - 138:19 Box [1] - 101:16 box [1] - 127:17 boxes [1] - 110:25 boys [1] - 107:24 break [7] - 26:4, 26:5, 69:25, 86:13, 92:13,</p>	<p>149:5, 149:9 Breast [2] - 1:14, 25:9 BREAST [3] - 25:8, 39:23, 41:23 bridge [1] - 41:1 bridges [1] - 41:2 brief [2] - 25:19, 68:21 briefly [1] - 97:12 bring [17] - 8:6, 14:9, 21:18, 24:11, 38:3, 43:8, 58:15, 74:15, 79:24, 91:7, 93:24, 106:1, 106:6, 107:22, 108:9, 131:11, 147:22 brings [1] - 146:15 broad [3] - 115:7, 115:8, 115:9 broke [1] - 88:12 brought [16] - 5:8, 15:16, 27:23, 27:24, 45:8, 69:5, 69:17, 71:21, 90:10, 91:13, 97:4, 106:18, 108:17, 108:21, 129:8, 129:10 Brule [9] - 2:5, 11:10, 11:25, 58:14, 59:5, 59:6, 59:7, 59:23, 68:1 Budget [1] - 142:24 budget [14] - 53:10, 54:12, 54:20, 55:10, 114:23, 114:24, 118:4, 118:9, 121:9, 121:11, 121:22, 122:7, 123:24, 126:9 budgetaries [1] - 117:17 budgeted [2] - 114:1, 114:10 budgets [2] - 11:7, 122:20 Buffalo [1] - 20:3 build [13] - 7:6, 8:2, 27:9, 30:11, 31:7, 39:20, 41:2, 73:8, 105:25, 108:15, 109:16, 111:16, 123:19 building [5] - 64:1, 95:16, 117:7, 136:2, 147:24 built [4] - 24:18, 76:23, 96:5, 98:5 bulletin [1] - 62:16 bullets [1] - 131:23 bunch [2] - 61:24, 77:6 burden [1] - 104:23</p>
B				
<p>background [6] - 4:17, 7:14, 7:24, 15:17, 17:1, 31:5 bad [3] - 87:23, 93:17, 102:13 ballpark [1] - 124:12 Band [1] - 20:7 bands [2] - 80:25 bank [2] - 100:25, 101:1 banking [1] - 127:10 barrel [1] - 125:3 base [7] - 13:6, 35:21, 37:20, 40:8, 43:13,</p>				

<p>Bureau [7] - 1:19, 1:19, 13:14, 13:21, 25:17, 26:1, 141:19</p> <p>burial [5] - 22:1, 22:8, 28:13, 76:24, 144:21</p> <p>burials [1] - 144:18</p> <p>Burlington [1] - 41:5</p> <p>Burns [1] - 12:13</p> <p>business [8] - 10:13, 17:1, 43:18, 43:20, 44:4, 44:6, 56:5, 126:20</p> <p>businesses [1] - 110:6</p> <p>businessmen [1] - 127:10</p> <p>buy [1] - 66:7</p> <p>Buy [1] - 107:16</p>	<p>101:3</p> <p>Castle [1] - 13:21</p> <p>catastrophes [1] - 107:5</p> <p>category [2] - 35:22, 47:6</p> <p>Cathy [18] - 1:9, 4:3, 15:13, 23:22, 35:23, 59:19, 65:13, 65:15, 74:6, 93:19, 95:8, 109:5, 110:11, 121:21, 123:15, 127:6, 131:2, 133:21</p> <p>Cathy's [1] - 114:2</p> <p>cattle [1] - 137:2</p> <p>Caucasian [1] - 14:1</p> <p>caucus [22] - 77:3, 78:20, 79:24, 83:21, 92:17, 97:5, 105:5, 106:3, 106:18, 108:21, 109:1, 111:22, 113:8, 113:13, 119:3, 121:5, 127:25, 128:2, 128:12, 139:8, 142:13, 149:5</p> <p>caucused [1] - 107:3</p> <p>caucusing [1] - 47:22</p> <p>caught [2] - 126:10, 131:13</p> <p>caused [1] - 102:19</p> <p>Cedar [1] - 15:6</p> <p>center [1] - 147:22</p> <p>central [2] - 23:4, 58:8</p> <p>centralize [1] - 102:14</p> <p>centralized [2] - 105:11, 105:18</p> <p>cents [1] - 85:15</p> <p>CEO [1] - 46:19</p> <p>ceremonies [3] - 49:9, 70:15, 71:16</p> <p>certain [16] - 35:2, 39:24, 39:25, 40:1, 51:16, 71:4, 77:14, 77:22, 77:23, 78:4, 78:22, 79:22, 81:20, 82:7, 115:19, 120:20</p> <p>certainly [7] - 46:16, 113:11, 117:21, 120:21, 122:23, 130:10, 135:24</p> <p>CERTIFICATE [1] - 150:2</p> <p>Certified [3] - 3:5, 150:6, 150:19</p> <p>CERTIFY [1] - 150:8</p> <p>cetera [6] - 48:2, 65:4, 134:24, 134:25, 135:8, 147:6</p> <p>CFR [3] - 5:19, 94:11,</p>	<p>96:25</p> <p>Chairman [2] - 5:1, 5:9</p> <p>chairman [3] - 25:15, 59:1, 132:10</p> <p>chairman's [1] - 59:5</p> <p>chairmans [1] - 126:14</p> <p>challenged [3] - 9:2, 9:8, 9:14</p> <p>challenges [1] - 23:11</p> <p>chance [2] - 4:2, 65:21</p> <p>change [7] - 16:8, 33:9, 43:24, 102:18, 120:19, 121:2</p> <p>changed [5] - 33:7, 78:22, 120:2, 120:9, 120:17</p> <p>changes [2] - 115:19, 139:23</p> <p>changing [1] - 39:20</p> <p>chaos [1] - 102:20</p> <p>charge [4] - 7:2, 103:8, 103:10, 104:6</p> <p>Charlie [2] - 1:18, 24:22</p> <p>Chase [5] - 2:8, 5:7, 146:5, 146:22, 148:7</p> <p>chatted [1] - 97:11</p> <p>check [5] - 66:6, 100:24, 101:3, 101:10, 105:9</p> <p>checked [1] - 110:25</p> <p>checks [8] - 26:17, 32:2, 100:25, 101:5, 101:14, 101:17, 112:4, 112:5</p> <p>CHERI [1] - 150:5</p> <p>Cheri [2] - 3:4, 150:18</p> <p>chew [1] - 135:19</p> <p>Cheyenne [5] - 1:22, 18:18, 41:4, 126:3, 143:12</p> <p>chisel [1] - 43:12</p> <p>choose [1] - 96:21</p> <p>chose [1] - 56:10</p> <p>Chunks [1] - 126:4</p> <p>Cindy [2] - 1:19, 25:25</p> <p>circle [1] - 127:17</p> <p>Circuit [2] - 9:15, 84:18</p> <p>circulate [1] - 77:25</p> <p>circumstances [2] - 87:13, 88:11</p> <p>cited [1] - 123:18</p> <p>citing [1] - 123:17</p> <p>citizens [2] - 14:15, 14:23</p> <p>City [4] - 3:2, 8:5, 25:17, 26:1</p>	<p>civil [4] - 10:23, 11:2, 51:20, 116:14</p> <p>claimed [1] - 138:21</p> <p>clarification [2] - 62:25, 69:18</p> <p>clarified [2] - 96:17, 138:6</p> <p>clarify [5] - 5:17, 52:6, 59:17, 70:21, 93:2</p> <p>clarity [1] - 136:14</p> <p>clause [2] - 132:25, 147:12</p> <p>clauses [1] - 147:9</p> <p>clear [13] - 23:18, 47:23, 53:15, 54:2, 77:19, 78:15, 79:18, 85:2, 85:14, 97:6, 131:22, 141:24, 143:2</p> <p>clearly [4] - 41:17, 47:25, 66:22, 129:21</p> <p>clock [3] - 31:17, 31:19</p> <p>close [4] - 12:25, 42:2, 52:20, 101:4</p> <p>closed [1] - 24:7</p> <p>closely [3] - 16:15, 25:5, 42:20</p> <p>closer [1] - 8:22</p> <p>closest [1] - 12:1</p> <p>Cloud [1] - 23:4</p> <p>clusters [1] - 26:24</p> <p>coal [5] - 127:8, 143:8, 143:9, 147:18, 148:8</p> <p>Coalition [2] - 93:13, 94:16</p> <p>cold [1] - 87:12</p> <p>collected [3] - 31:3, 117:7, 132:20</p> <p>collecting [1] - 116:16</p> <p>Colstrip [1] - 143:21</p> <p>combination [1] - 36:15</p> <p>combine [2] - 26:10, 28:24</p> <p>combined [1] - 29:25</p> <p>combining [1] - 30:17</p> <p>comed [1] - 22:18</p> <p>comfortable [1] - 123:11</p> <p>coming [14] - 7:19, 9:25, 20:13, 22:3, 34:6, 36:5, 43:24, 72:10, 81:25, 84:4, 84:19, 91:5, 105:18, 108:18</p> <p>commands [1] - 137:23</p> <p>commencing [1] - 3:3</p> <p>comment [13] - 54:7,</p>	<p>69:5, 93:23, 95:9, 109:6, 120:7, 133:21, 135:7, 139:24, 142:15, 149:4, 149:8</p> <p>commented [2] - 12:14, 95:12</p> <p>comments [10] - 11:13, 31:20, 81:14, 86:19, 89:10, 89:18, 93:25, 98:19, 111:24, 127:24</p> <p>Commerce [1] - 54:23</p> <p>commerce [2] - 55:6</p> <p>commercial [1] - 126:21</p> <p>Commission [2] - 54:24, 141:11</p> <p>committed [2] - 66:10, 66:12</p> <p>committee [5] - 17:14, 49:10, 113:2, 113:5, 118:21</p> <p>committees [1] - 125:14</p> <p>common [1] - 109:10</p> <p>communities [1] - 66:5</p> <p>Community [1] - 1:15</p> <p>community [3] - 35:15, 126:18, 126:19</p> <p>compact [1] - 42:8</p> <p>companies [2] - 90:12, 90:13</p> <p>Company [1] - 143:12</p> <p>company [10] - 15:5, 15:7, 36:1, 87:7, 89:22, 90:3, 102:19, 108:19, 116:20, 117:16</p> <p>compared [1] - 126:16</p> <p>compensate [1] - 76:25</p> <p>compensation [19] - 35:11, 35:13, 36:4, 36:16, 38:5, 47:7, 47:10, 47:13, 48:4, 48:6, 57:18, 62:25, 63:1, 63:17, 63:19, 73:17, 85:18, 85:23, 97:16</p> <p>competence [2] - 86:24, 87:14</p> <p>complaints [1] - 111:6</p> <p>complete [2] - 23:16, 58:13</p> <p>completed [4] - 5:10, 31:4, 31:6, 31:14</p> <p>completely [4] -</p>
C				
<p>C.P [1] - 38:13</p> <p>calvary [3] - 21:1, 21:7, 21:9</p> <p>Campbell [2] - 1:16, 25:14</p> <p>CAMPBELL [1] - 25:13</p> <p>Canada [1] - 126:19</p> <p>cannot [10] - 50:17, 62:5, 70:15, 70:18, 71:22, 72:6, 80:3, 80:4, 141:10</p> <p>capability [1] - 47:3</p> <p>capable [1] - 92:5</p> <p>capacity [1] - 15:8</p> <p>car [1] - 25:11</p> <p>card [2] - 10:13, 122:4</p> <p>care [3] - 50:18, 50:19, 91:16</p> <p>carefully [5] - 32:4, 111:24, 112:7, 112:22, 131:17</p> <p>carry [2] - 22:7, 102:23</p> <p>carrying [1] - 63:25</p> <p>cart [2] - 122:1, 139:13</p> <p>carve [2] - 114:23, 127:1</p> <p>carved [1] - 118:11</p> <p>case [8] - 31:25, 32:2, 37:14, 52:1, 98:8, 139:13, 140:2, 141:13</p> <p>cases [5] - 59:15, 66:7, 71:4, 127:15, 139:22</p> <p>cash [2] - 66:5, 101:5</p> <p>cashing [2] - 100:24,</p>				

<p>10:17, 89:6, 120:18, 142:2</p> <p>completing [2] - 142:4, 142:7</p> <p>Completion [1] - 133:1</p> <p>completion [1] - 33:5</p> <p>compliance [5] - 15:2, 24:5, 82:21, 113:25, 133:11</p> <p>complicated [2] - 45:11, 57:1</p> <p>comply [3] - 29:8, 61:8, 141:21</p> <p>complying [1] - 37:6</p> <p>component [2] - 110:23, 110:24</p> <p>components [1] - 26:22</p> <p>comprehensive [8] - 6:7, 9:17, 33:16, 33:17, 116:24, 117:9, 118:16, 132:15</p> <p>compromised [1] - 88:1</p> <p>conceded [1] - 62:3</p> <p>concentrate [1] - 111:15</p> <p>concept [1] - 80:20</p> <p>concern [4] - 34:1, 89:21, 96:1, 147:17</p> <p>concerned [9] - 13:22, 55:10, 87:8, 128:20, 128:22, 129:11, 130:3, 142:12, 144:23</p> <p>concerns [16] - 24:17, 30:1, 54:25, 55:3, 55:9, 69:1, 84:3, 84:6, 86:12, 90:25, 96:22, 101:25, 102:1, 112:13, 112:14, 138:2</p> <p>conclude [1] - 47:14</p> <p>concluded [4] - 9:1, 9:19, 37:1, 61:24</p> <p>conclusion [1] - 74:16</p> <p>condemn [5] - 145:2, 146:10, 146:15, 146:16</p> <p>condemnation [14] - 139:3, 139:10, 139:13, 139:17, 139:19, 141:12, 141:13, 143:25, 145:25, 146:1, 146:3, 146:6, 146:7, 149:6</p> <p>condemned [3] -</p>	<p>140:3, 144:7, 148:20</p> <p>condemning [1] - 144:6</p> <p>condemns [1] - 145:11</p> <p>condition [3] - 61:7, 76:4, 82:4</p> <p>conditions [6] - 10:5, 15:25, 110:16, 110:17, 110:19, 110:21</p> <p>conductive [1] - 108:22</p> <p>conduct [6] - 51:24, 99:22, 109:13, 109:20, 109:22, 110:7</p> <p>conducted [4] - 8:13, 19:1, 70:16, 114:7</p> <p>conducting [2] - 81:21, 99:13</p> <p>conductor [1] - 44:19</p> <p>confidential [1] - 86:10</p> <p>confidentiality [1] - 133:11</p> <p>conflict [2] - 53:13, 104:1</p> <p>conformity [1] - 144:25</p> <p>confused [5] - 62:2, 64:25, 65:9, 129:3, 135:23</p> <p>confusing [1] - 135:18</p> <p>connect [1] - 143:20</p> <p>connecting [1] - 143:17</p> <p>Conrad [4] - 1:22, 18:17, 56:23, 125:6</p> <p>consensus [6] - 16:3, 16:7, 28:25, 69:10, 104:9, 105:22</p> <p>consider [5] - 28:23, 94:11, 97:1, 142:4, 145:6</p> <p>considerable [2] - 31:1, 38:7</p> <p>consideration [2] - 139:5, 141:24</p> <p>considered [1] - 76:18</p> <p>consist [1] - 48:25</p> <p>consistent [1] - 24:12</p> <p>conspiracy [5] - 109:14, 143:5, 143:6, 143:16, 143:18</p> <p>constrained [1] - 32:14</p> <p>construct [2] - 64:3, 134:15</p>	<p>constructed [2] - 64:2, 71:8</p> <p>construction [60] - 7:4, 10:11, 27:15, 28:8, 28:10, 32:15, 34:3, 34:4, 34:5, 34:7, 34:9, 34:10, 36:19, 36:22, 37:3, 37:4, 37:5, 37:14, 37:17, 37:18, 38:10, 38:11, 38:16, 38:18, 38:23, 38:25, 39:2, 39:3, 39:5, 39:23, 40:11, 40:18, 41:1, 41:18, 42:3, 42:7, 42:11, 42:16, 43:3, 43:8, 44:9, 45:3, 45:22, 47:18, 50:2, 50:3, 50:7, 50:10, 51:2, 51:4, 51:18, 51:19, 51:24, 52:7, 64:1, 64:23, 70:16, 117:2, 133:6, 135:9</p> <p>construction's [1] - 64:24</p> <p>constructive [3] - 9:25, 10:10, 10:21</p> <p>consult [3] - 82:19, 94:11, 96:25</p> <p>consultant [2] - 6:15, 23:18</p> <p>consultants [14] - 11:1, 29:3, 35:20, 39:11, 53:19, 53:20, 53:25, 54:4, 55:19, 56:20, 57:2, 57:3, 78:18, 116:10</p> <p>CONSULTATION [1] - 1:2</p> <p>consultation [6] - 5:16, 5:18, 6:2, 33:6, 56:13, 132:22</p> <p>Consultation [2] - 132:8, 132:18</p> <p>consultations [3] - 5:19, 11:12, 11:18</p> <p>consulting [1] - 24:15</p> <p>contact [1] - 43:2</p> <p>contacting [1] - 108:25</p> <p>contacts [1] - 121:19</p> <p>contaminate [1] - 108:10</p> <p>contention [1] - 100:17</p> <p>contest [1] - 39:8</p> <p>contingencies [1] - 147:1</p> <p>continually [2] - 80:9, 99:24</p>	<p>continuance [1] - 134:24</p> <p>continue [11] - 10:9, 23:20, 26:19, 27:18, 51:9, 54:15, 57:19, 83:20, 98:9, 117:1, 130:17</p> <p>Continued [1] - 2:1</p> <p>continued [1] - 4:6</p> <p>continues [1] - 48:20</p> <p>continuing [3] - 11:8, 57:17, 83:19</p> <p>contract [10] - 45:21, 46:1, 64:5, 64:14, 65:7, 99:20, 100:2, 103:25, 113:18, 114:7</p> <p>contracted [4] - 33:8, 103:23, 114:4, 123:10</p> <p>contracting [10] - 40:24, 53:4, 90:13, 98:22, 98:24, 99:18, 104:7, 108:19, 121:13, 123:3</p> <p>contractor [20] - 38:20, 38:21, 39:11, 39:14, 40:12, 41:9, 41:14, 41:16, 42:5, 42:12, 42:19, 42:23, 45:20, 45:24, 50:14, 56:14, 91:24, 92:12, 113:20, 114:4</p> <p>contractors [11] - 39:19, 55:14, 55:19, 56:15, 56:16, 64:6, 64:14, 66:25, 67:2, 91:19, 91:20</p> <p>contracts [18] - 52:7, 52:8, 52:9, 52:10, 66:24, 67:1, 99:17, 100:1, 100:3, 100:4, 104:12, 104:18, 104:24, 110:2, 110:3, 123:13, 124:2</p> <p>control [9] - 51:21, 51:23, 53:7, 55:3, 143:25, 144:1, 144:4, 144:8, 146:19</p> <p>controlling [2] - 145:12, 145:15</p> <p>controversial [1] - 128:11</p> <p>convenience [1] - 35:11</p> <p>conversation [2] - 37:11, 83:12</p> <p>conversations [1] - 111:18</p> <p>coordination [2] -</p>	<p>4:23, 25:6</p> <p>coordinator [2] - 15:2, 17:15</p> <p>copies [5] - 10:3, 28:19, 31:15, 61:4, 61:5</p> <p>copy [4] - 58:24, 59:9, 61:2, 61:9</p> <p>Corps [2] - 83:13, 137:21</p> <p>correct [6] - 50:3, 64:9, 67:2, 67:9, 141:5, 150:11</p> <p>correctly [2] - 52:19, 81:21</p> <p>corridor [5] - 27:20, 82:5, 133:25, 134:6, 138:15</p> <p>corridors [3] - 133:24, 134:4</p> <p>cost [2] - 124:5, 124:10</p> <p>costed [1] - 126:16</p> <p>costs [1] - 123:25</p> <p>cough [1] - 122:24</p> <p>Council [4] - 24:6, 24:7, 93:14, 94:15</p> <p>council [3] - 16:17, 17:7, 24:24</p> <p>counties [1] - 140:2</p> <p>country [7] - 14:15, 14:23, 57:2, 65:5, 118:24, 138:22, 139:2</p> <p>Country [2] - 106:8, 106:10</p> <p>County [1] - 25:22</p> <p>COUNTY [1] - 150:3</p> <p>couple [15] - 9:3, 10:20, 28:1, 35:10, 35:17, 44:8, 45:8, 48:8, 58:9, 92:24, 99:10, 102:3, 102:23, 107:1, 142:15</p> <p>course [18] - 5:12, 8:15, 28:13, 32:18, 37:22, 37:24, 54:20, 55:8, 59:22, 65:16, 66:10, 70:25, 81:11, 86:5, 91:18, 92:24, 115:1, 127:18</p> <p>Court [6] - 9:15, 84:18, 146:6, 146:7, 146:8, 146:14</p> <p>court [16] - 4:14, 9:9, 9:14, 59:13, 139:11, 139:20, 139:22, 140:1, 140:2, 140:9, 140:12, 140:15,</p>
---	---	--	--	---

<p>140:19, 141:14, 149:6</p> <p>court-ordered [2] - 140:2, 149:6</p> <p>courts [2] - 9:2, 140:5</p> <p>cover [4] - 95:24, 95:25, 105:19, 109:17</p> <p>covered [3] - 13:7, 95:22, 95:23</p> <p>crane [1] - 43:6</p> <p>crash [1] - 5:12</p> <p>Crazy [2] - 138:22</p> <p>create [5] - 99:1, 99:17, 102:14, 103:19, 134:14</p> <p>created [6] - 48:13, 55:2, 69:17, 93:19, 93:20, 99:1</p> <p>creating [2] - 59:18, 71:24</p> <p>Creativity [1] - 86:3</p> <p>credit [1] - 122:4</p> <p>creek [1] - 76:24</p> <p>crew [12] - 18:5, 40:9, 40:17, 43:24, 87:4, 87:6, 87:8, 87:22, 88:10, 88:13, 90:7, 90:8</p> <p>crews [4] - 40:21, 43:24, 43:25</p> <p>criteria [2] - 56:8, 122:18</p> <p>criterion [1] - 29:23</p> <p>critical [3] - 26:11, 32:16, 70:2</p> <p>cross [4] - 86:22, 89:12, 91:8, 112:22</p> <p>cross-cultural [4] - 86:22, 89:12, 91:8, 112:22</p> <p>crossed [1] - 21:8</p> <p>crossing [3] - 25:21, 41:5, 42:10</p> <p>crossings [2] - 41:4, 137:21</p> <p>Crows [3] - 1:14, 25:9, 126:6</p> <p>CROWS [3] - 25:8, 39:23, 41:23</p> <p>crying [1] - 22:16</p> <p>cultural [62] - 11:3, 13:7, 13:22, 14:17, 16:1, 16:20, 16:24, 17:4, 17:14, 17:20, 18:7, 19:6, 24:5, 24:12, 24:18, 25:19, 26:16, 26:20, 26:23, 27:13, 28:6, 29:24, 30:6, 30:14, 30:18,</p>	<p>32:5, 32:14, 32:16, 33:10, 34:15, 34:17, 38:7, 38:8, 39:13, 51:5, 51:11, 60:22, 63:8, 66:16, 73:18, 82:25, 86:22, 89:12, 91:8, 97:23, 103:18, 105:19, 112:22, 115:4, 119:24, 122:17, 125:21, 132:3, 132:7, 132:9, 132:18, 132:23, 133:9, 134:2, 136:3, 136:5</p> <p>Cultural [1] - 25:10</p> <p>cultures [1] - 126:7</p> <p>curation [1] - 132:19</p> <p>Curley [16] - 1:14, 12:7, 13:24, 18:1, 18:3, 22:18, 30:19, 54:6, 58:11, 61:12, 64:9, 64:16, 115:8, 116:3, 117:5, 121:20</p> <p>current [3] - 8:16, 8:17, 12:2</p> <p>curve [1] - 138:17</p> <p>Cut [1] - 20:7</p> <p>cut [3] - 39:9, 119:6, 130:19</p> <p>cuts [1] - 118:24</p> <p>cutting [2] - 125:7, 142:13</p>	<p>59:24, 107:3, 139:11, 139:13, 139:15, 139:16</p> <p>Dated [1] - 150:13</p> <p>dated [1] - 67:5</p> <p>dates [1] - 139:20</p> <p>Dave [6] - 1:10, 16:13, 92:18, 98:21, 98:23, 123:4</p> <p>Dawakton [1] - 19:13</p> <p>days [3] - 10:21, 83:4, 138:4</p> <p>days' [1] - 100:19</p> <p>deal [14] - 13:10, 41:6, 49:3, 49:4, 63:13, 72:12, 72:23, 75:12, 75:13, 76:14, 106:5, 109:8, 148:3, 148:16</p> <p>Dealing [1] - 148:4</p> <p>dealing [9] - 34:8, 55:25, 74:16, 77:13, 111:10, 116:1, 116:4, 122:12, 149:1</p> <p>deals [1] - 23:13</p> <p>dealt [4] - 13:8, 49:6, 49:13, 135:10</p> <p>Deb [1] - 17:6</p> <p>Debbie [1] - 1:20</p> <p>December [5] - 9:11, 9:15, 9:19, 38:17, 139:11</p> <p>decide [8] - 31:19, 38:13, 71:18, 74:21, 77:2, 83:21, 83:22, 113:4</p> <p>decision [12] - 9:4, 9:14, 9:16, 9:17, 51:13, 68:6, 72:22, 81:22, 84:20, 135:15, 135:16, 138:8</p> <p>decisions [5] - 8:24, 20:11, 109:21, 135:13, 147:8</p> <p>deem [1] - 82:25</p> <p>deep [2] - 147:21, 148:1</p> <p>default [1] - 18:20</p> <p>DEFENDER [1] - 6:5</p> <p>Defender [2] - 2:7, 6:5</p> <p>define [2] - 41:17, 121:10</p> <p>defined [2] - 39:15, 137:10</p> <p>defining [1] - 26:15</p> <p>definite [1] - 90:13</p> <p>definitely [5] - 6:12, 46:8, 46:11, 49:2, 117:24</p> <p>definitions [2] - 68:12,</p>	<p>68:21</p> <p>degree [3] - 23:4, 57:4, 148:10</p> <p>delegates [1] - 13:10</p> <p>delete [2] - 119:19, 142:18</p> <p>deletions [1] - 111:24</p> <p>demonstrate [1] - 47:3</p> <p>denigrated [1] - 95:1</p> <p>Denver [2] - 24:8, 25:4</p> <p>Department [1] - 7:16</p> <p>dependant [3] - 27:13, 27:18, 117:1</p> <p>depth [2] - 11:23, 112:17</p> <p>Deputy [1] - 7:16</p> <p>describing [2] - 131:3, 131:4</p> <p>design [8] - 7:4, 23:12, 134:13, 136:17, 137:7, 137:19, 138:8, 149:6</p> <p>designated [3] - 132:9, 132:19, 132:23</p> <p>designed [1] - 8:18</p> <p>designers [1] - 136:22</p> <p>DESROSIERS [6] - 19:20, 52:20, 102:8, 105:4, 107:14, 131:8</p> <p>Desrosiers [3] - 1:23, 19:20, 52:19</p> <p>destroy [3] - 85:4, 98:1, 98:4</p> <p>destroyed [5] - 76:8, 76:16, 77:17, 98:9, 98:10</p> <p>destruction [1] - 97:23</p> <p>detail [3] - 37:20, 52:9, 68:17</p> <p>detailed [1] - 119:22</p> <p>determination [3] - 50:25, 97:25, 98:4</p> <p>determinations [2] - 81:11, 134:19</p> <p>determine [9] - 32:19, 38:1, 74:20, 114:17, 122:16, 122:17, 132:10, 133:18, 145:16</p> <p>determined [5] - 50:20, 119:12, 119:17, 133:1, 134:6</p> <p>determining [2] - 129:25, 130:2</p> <p>develop [19] - 16:3, 27:3, 29:25, 30:10, 45:24, 46:21, 62:12, 63:9, 63:11, 63:23,</p>	<p>65:2, 74:22, 75:1, 90:23, 114:18, 121:8, 121:12, 128:17, 133:4</p> <p>developed [24] - 12:6, 12:13, 12:20, 14:9, 16:6, 26:15, 28:17, 28:20, 29:5, 29:9, 30:10, 30:21, 30:22, 30:25, 31:3, 34:22, 48:25, 63:15, 95:21, 95:25, 114:13, 115:24, 115:25, 130:7</p> <p>developers [1] - 18:3</p> <p>developing [4] - 11:23, 75:10, 116:12, 121:11</p> <p>development [18] - 12:24, 13:11, 14:10, 18:15, 27:25, 35:4, 45:7, 60:7, 62:20, 62:22, 62:23, 96:3, 96:4, 127:2, 132:14, 132:22, 143:8</p> <p>dialogue [2] - 10:10, 10:21</p> <p>dialogues [1] - 48:4</p> <p>Dianne [7] - 1:23, 19:20, 52:19, 102:7, 102:13, 106:2, 107:13</p> <p>dictated [1] - 50:16</p> <p>dictorial [1] - 117:21</p> <p>difference [2] - 96:9, 96:10</p> <p>differences [1] - 83:15</p> <p>different [27] - 7:9, 8:20, 18:11, 19:3, 21:21, 22:9, 30:8, 35:10, 36:14, 44:8, 50:11, 51:20, 65:12, 80:20, 98:16, 98:17, 99:5, 100:17, 119:3, 123:12, 126:7, 131:23, 133:24, 134:4, 134:5, 140:16, 147:10</p> <p>Different [2] - 41:24, 98:17</p> <p>differentiated [1] - 50:4</p> <p>differently [1] - 127:19</p> <p>differing [1] - 51:15</p> <p>difficult [4] - 82:7, 129:17, 141:25</p> <p>difficulties [2] - 99:15, 105:8</p> <p>dig [3] - 71:13, 87:18, 88:2</p>
	<p style="text-align: center;">D</p>			
	<p>D.C [1] - 7:15</p> <p>Dakota [19] - 1:18, 3:2, 3:6, 8:6, 11:19, 15:1, 20:4, 20:8, 94:2, 126:2, 126:15, 140:23, 140:25, 141:9, 141:12, 144:20, 144:22, 150:7, 150:13</p> <p>DAKOTA [1] - 150:1</p> <p>Dakotan [1] - 7:14</p> <p>Dakotas [1] - 25:17</p> <p>Dan [1] - 12:13</p> <p>dark [1] - 109:15</p> <p>data [21] - 30:23, 31:1, 33:14, 36:9, 71:14, 72:18, 82:9, 88:21, 89:7, 89:9, 117:7, 128:21, 129:2, 129:4, 129:6, 129:14, 130:4, 130:8, 130:14, 130:22, 133:14</p> <p>date [8] - 9:5, 59:23,</p>			

<p>digging [1] - 20:24 direct [1] - 110:3 Direct [1] - 7:16 directed [2] - 33:6, 33:8 direction [9] - 11:4, 19:9, 53:7, 53:20, 84:20, 133:25, 137:4, 138:13 directions [1] - 40:14 directly [15] - 7:7, 10:14, 11:4, 46:6, 46:14, 50:5, 52:13, 53:18, 53:20, 53:22, 105:17, 114:3, 121:15, 123:9, 136:16 director [4] - 7:13, 16:24, 17:4, 24:23 disagree [1] - 60:2 disagreeing [1] - 96:16 disagreement [1] - 78:11 discharged [1] - 20:13 discoveries [7] - 28:12, 133:8, 135:11, 144:1, 144:2, 145:17, 145:19 discovery [3] - 132:25, 139:21, 148:12 discrepancies [1] - 100:20 discrepancy [2] - 103:3, 106:7 discretion [1] - 146:11 discuss [15] - 4:6, 12:12, 16:8, 35:12, 48:5, 68:17, 77:4, 79:23, 80:20, 81:7, 83:6, 105:5, 120:23, 128:12 discussed [6] - 35:15, 69:16, 70:12, 81:19, 91:18, 129:5 discussing [3] - 83:5, 111:15, 138:3 discussion [21] - 29:4, 38:15, 47:8, 58:23, 63:18, 68:4, 68:18, 68:24, 78:25, 79:9, 79:10, 83:1, 86:13, 113:12, 128:8, 130:10, 135:20, 138:5, 141:23, 142:8, 142:9 discussions [2] - 12:9, 60:6</p>	<p>disposition [8] - 51:8, 132:24, 143:25, 144:1, 144:4, 144:9, 145:9, 145:16 Dispute [1] - 113:1 dispute [5] - 48:23, 87:9, 118:20, 147:9, 147:12 disputed [1] - 76:1 disputes [1] - 113:3 disrespect [1] - 20:20 dissembled [1] - 98:12 distance [1] - 51:7 distances [1] - 16:11 distinction [1] - 14:19 distinguish [2] - 75:5, 75:6 disturbed [1] - 87:11 disturbing [1] - 88:6 diverse [1] - 126:7 DM&E [50] - 1:11, 2:5, 4:5, 6:17, 7:2, 7:10, 7:13, 7:18, 8:2, 8:4, 10:4, 10:25, 14:13, 23:12, 23:18, 25:6, 28:5, 32:6, 32:15, 35:19, 36:17, 38:4, 44:13, 49:1, 50:9, 53:18, 53:25, 57:15, 63:22, 64:3, 64:4, 76:16, 76:23, 92:22, 103:23, 105:17, 110:3, 110:12, 113:19, 114:1, 114:5, 116:20, 121:15, 129:10, 133:2, 138:7, 145:11, 145:15, 146:3, 147:5 DO [1] - 150:8 document [15] - 9:17, 12:6, 12:10, 16:7, 28:25, 60:17, 61:3, 61:4, 61:12, 76:5, 79:5, 84:9, 93:9, 117:9, 119:22 documented [2] - 76:22 documents [16] - 5:25, 58:12, 58:14, 58:20, 61:23, 77:23, 81:12, 82:18, 82:20, 93:18, 93:19, 98:7, 98:10, 117:23, 147:10 dollar [5] - 74:2, 74:4, 75:2, 79:3, 85:15 dollars [1] - 65:24 dominated [2] - 54:25,</p>	<p>78:25 done [47] - 10:8, 10:14, 17:22, 27:10, 27:14, 30:11, 31:7, 36:25, 37:1, 37:2, 37:12, 37:24, 41:22, 41:25, 46:8, 47:11, 47:19, 50:5, 55:18, 55:20, 76:16, 86:4, 86:7, 89:1, 100:8, 110:8, 114:3, 116:25, 118:10, 120:15, 123:13, 125:1, 125:12, 125:13, 131:8, 134:21, 135:1, 135:8, 135:25, 137:13, 139:2, 141:6, 141:8, 146:2, 147:4 door [1] - 126:16 Doug [12] - 1:13, 10:22, 23:11, 35:9, 36:16, 37:19, 39:1, 73:12, 91:12, 111:20, 113:23, 114:11 Douglas [1] - 20:2 down [20] - 4:12, 14:4, 14:5, 20:19, 20:24, 24:7, 38:20, 38:22, 41:16, 51:6, 62:4, 86:22, 100:22, 101:8, 104:9, 107:24, 122:23, 125:16, 126:11, 137:9 draft [6] - 16:5, 29:1, 29:3, 29:4, 142:25 Draft [1] - 9:7 drafted [1] - 117:5 dragged [1] - 17:8 drainage [2] - 148:4 Drainage [1] - 148:4 drastically [1] - 139:22 drawing [1] - 133:23 drinking [5] - 87:7, 88:9, 89:20, 89:22, 90:8 drive [1] - 79:2 drives [1] - 149:7 due [1] - 95:10 duly [1] - 150:8 duly-appointed [1] - 150:8 duration [1] - 37:15 during [12] - 21:16, 28:10, 34:3, 34:5, 34:9, 68:18, 79:24,</p>	<p>92:6, 99:11, 113:8, 117:7, 128:12 duties [1] - 61:16</p> <hr/> <p>E</p> <hr/> <p>e-mailed [1] - 115:16 EAGLE [28] - 6:22, 17:12, 69:4, 70:5, 70:11, 70:23, 71:20, 72:5, 73:24, 86:18, 89:14, 89:25, 91:10, 91:15, 92:7, 92:10, 92:13, 104:12, 107:16, 119:10, 119:15, 120:4, 122:5, 122:22, 123:6, 128:1, 137:25, 140:21 Eagle [4] - 1:21, 2:6, 6:22, 17:13 Eagles [3] - 13:1, 93:14, 94:15 early [3] - 11:20, 39:1, 39:22 earnest [1] - 137:19 earth [3] - 22:4, 39:8, 39:19 easement [3] - 145:12, 146:11, 146:17 easements [1] - 146:16 easier [2] - 110:4, 113:18 easily [1] - 44:5 east [4] - 15:21, 40:9, 43:15, 43:24 eastern [2] - 72:24, 73:4 eat [1] - 61:24 economic [16] - 12:24, 13:11, 14:8, 14:10, 18:15, 27:25, 35:4, 45:7, 57:24, 62:19, 66:4, 66:5, 75:7, 78:12, 78:14, 127:2 Economic [2] - 62:22, 62:23 edge [1] - 125:7 educated [2] - 22:5, 22:7 education [1] - 127:14 educational [1] - 127:1 effect [7] - 30:5, 34:18, 38:6, 71:9, 132:12, 137:3, 148:20 effects [12] - 38:1,</p>	<p>51:4, 70:18, 74:23, 114:18, 115:3, 128:24, 130:1, 131:1, 132:5, 133:5, 133:18 effort [2] - 95:2, 95:12 efforts [3] - 18:25, 39:16, 137:19 eight [1] - 134:7 Eighth [2] - 9:15, 84:18 Eileen [1] - 2:2 EIS [9] - 9:2, 9:7, 9:11, 10:4, 16:1, 133:23, 134:10 either [3] - 97:18, 104:18, 140:14 elaborate [1] - 88:19 elder [4] - 21:13, 24:24, 125:14, 138:20 elders [5] - 13:2, 27:8, 33:13, 117:3, 126:25 elected [1] - 13:2 element [1] - 43:10 Elgin [2] - 1:14, 25:9 eligibility [2] - 50:25, 134:19 eligible [15] - 26:25, 29:18, 29:22, 31:23, 32:20, 34:14, 50:20, 74:21, 114:17, 122:17, 122:18, 129:25, 132:2, 132:6, 133:4 eliminate [1] - 102:15 eliminating [1] - 102:2 emotional [1] - 21:23 employed [1] - 10:23 employee [4] - 44:23, 48:15, 48:16, 48:18 employing [1] - 89:19 employment [17] - 57:16, 62:12, 63:24, 64:5, 64:8, 64:13, 64:21, 64:22, 64:25, 65:7, 65:9, 65:12, 66:1, 66:17, 82:12, 96:3 Employment [2] - 64:16, 65:19 encompass [1] - 117:12 encompassing [2] - 33:1, 119:21 encounter [1] - 51:5 encountered [1] - 99:15 encourage [2] - 55:13 end [13] - 4:12, 8:7,</p>
--	--	---	---	--

<p>8:9, 8:15, 26:13, 37:13, 47:10, 47:11, 74:9, 104:14, 104:15, 104:16, 137:23</p> <p>endangered [2] - 12:23, 96:2</p> <p>endeavor [1] - 16:19</p> <p>ended [2] - 8:15, 56:6</p> <p>ending [1] - 38:17</p> <p>energy [1] - 126:21</p> <p>Energy's [1] - 7:16</p> <p>enforceable [1] - 61:17</p> <p>engage [1] - 5:16</p> <p>engaged [3] - 5:3, 7:4, 83:12</p> <p>engaging [1] - 66:17</p> <p>engine [3] - 44:6, 44:16, 44:23</p> <p>engineer [2] - 10:23, 44:17</p> <p>Engineering [6] - 1:12, 1:13, 1:13, 4:22, 10:23, 10:24</p> <p>engineering [8] - 50:13, 72:8, 125:1, 134:8, 134:9, 134:19, 137:23, 137:24</p> <p>engineeringwise [1] - 147:20</p> <p>Engineers [2] - 83:13, 137:21</p> <p>engineers [4] - 11:2, 71:1, 125:24, 137:5</p> <p>enormous [2] - 12:25, 125:19</p> <p>Enormous [1] - 125:19</p> <p>ensure [5] - 15:24, 19:22, 55:6, 91:1, 133:7</p> <p>ensuring [4] - 18:25, 37:6, 53:25, 55:9</p> <p>entail [2] - 37:21, 116:21</p> <p>entire [8] - 9:16, 27:20, 33:1, 33:21, 34:18, 48:22, 75:14, 129:23</p> <p>entirely [5] - 65:11, 73:5, 91:25, 106:25</p> <p>entitled [1] - 150:10</p> <p>entity [1] - 61:18</p> <p>entry [1] - 65:3</p> <p>envelope [1] - 136:23</p> <p>environment [1] - 134:12</p> <p>Environmental [1] -</p>	<p>25:4</p> <p>environmental [7] - 11:2, 55:9, 60:22, 76:4, 124:17, 125:21, 125:23</p> <p>envision [1] - 115:1</p> <p>envisioned [1] - 64:10</p> <p>equality [1] - 106:15</p> <p>equipped [1] - 99:7</p> <p>equitable [1] - 100:13</p> <p>Erin [2] - 1:16, 25:3</p> <p>erosion [1] - 51:21</p> <p>error [1] - 71:24</p> <p>especially [2] - 20:21, 21:20</p> <p>essential [3] - 13:6, 100:23, 101:19</p> <p>Essentially [1] - 15:9</p> <p>essentially [2] - 12:16, 72:25</p> <p>establish [1] - 66:2</p> <p>established [3] - 78:4, 79:19, 113:3</p> <p>estate [1] - 145:7</p> <p>estimate [2] - 42:21, 44:3</p> <p>estimated [2] - 43:19, 121:22</p> <p>et [6] - 48:2, 65:4, 134:24, 134:25, 135:8, 147:6</p> <p>ethic [1] - 126:20</p> <p>ethno [2] - 27:7, 33:12</p> <p>ethno-historic [2] - 27:7, 33:12</p> <p>ethnographic [2] - 33:12, 117:6</p> <p>evaluated [1] - 133:23</p> <p>evaluation [1] - 132:16</p> <p>event [4] - 12:20, 64:2, 64:3, 145:21</p> <p>eventually [2] - 15:21, 143:22</p> <p>Eventually [1] - 55:4</p> <p>evidence [1] - 88:20</p> <p>exact [4] - 41:20, 137:20, 139:9, 145:21</p> <p>exactly [14] - 10:8, 26:13, 39:2, 45:20, 59:10, 65:11, 67:9, 77:4, 82:10, 108:7, 111:21, 112:19, 123:7, 139:16</p> <p>Exactly [5] - 54:13, 55:21, 63:20, 115:12, 122:11</p> <p>examining [1] - 89:9</p> <p>example [4] - 73:25,</p>	<p>87:9, 128:9, 141:17</p> <p>examples [1] - 100:8</p> <p>excavating [1] - 20:25</p> <p>excellent [2] - 105:22, 125:2</p> <p>Except [1] - 61:10</p> <p>exception [1] - 141:7</p> <p>exceptions [1] - 9:3</p> <p>exclude [1] - 83:14</p> <p>excuse [1] - 50:1</p> <p>Excuse [1] - 70:5</p> <p>Executive [1] - 133:13</p> <p>exercises [1] - 116:8</p> <p>existed [1] - 54:23</p> <p>existing [4] - 8:3, 40:10, 72:25, 73:4</p> <p>expand [1] - 8:3</p> <p>expands [2] - 118:3, 118:4</p> <p>expect [4] - 51:14, 52:4, 69:10, 141:15</p> <p>expected [1] - 133:3</p> <p>expense [1] - 126:12</p> <p>experience [6] - 6:12, 18:21, 19:2, 21:14, 64:17, 116:4</p> <p>expert [1] - 33:14</p> <p>expertise [1] - 86:7</p> <p>explain [4] - 38:19, 45:14, 52:17, 52:24</p> <p>explore [1] - 112:16</p> <p>expressed [2] - 33:19, 133:14</p> <p>expressing [1] - 86:11</p> <p>expressly [1] - 61:16</p> <p>extend [1] - 38:11</p> <p>extensive [1] - 64:16</p> <p>extensively [1] - 12:15</p> <p>extent [4] - 6:9, 50:15, 128:6, 134:13</p> <p>extenuating [1] - 87:13</p> <p>extra [1] - 32:7</p> <p>eyes [1] - 124:20</p> <p>Eyes [3] - 2:8, 5:7, 146:22</p> <p>EYES [2] - 5:7, 146:22</p>	<p>145:15</p> <p>fairly [5] - 7:25, 39:10, 101:1, 101:4, 119:22</p> <p>faith [2] - 42:5, 127:12</p> <p>Faith [4] - 1:21, 17:13, 86:16, 89:11</p> <p>fall [5] - 25:5, 35:22, 38:16, 39:4, 93:20</p> <p>Fall [1] - 25:22</p> <p>Falls [1] - 4:22</p> <p>familiar [1] - 10:18</p> <p>family [1] - 66:7</p> <p>fantastic [1] - 123:21</p> <p>far [18] - 4:12, 22:19, 46:13, 50:2, 55:10, 55:23, 56:8, 60:14, 70:22, 78:13, 81:13, 108:15, 109:21, 113:21, 130:3, 131:24, 137:24, 139:2</p> <p>Fargo [3] - 101:2, 101:3, 101:7</p> <p>farm [1] - 17:17</p> <p>fashion [3] - 24:13, 101:13, 117:13</p> <p>father [2] - 23:8</p> <p>faunal [1] - 112:14</p> <p>fear [1] - 108:8</p> <p>feasible [1] - 101:16</p> <p>February [2] - 9:13, 22:11</p> <p>federal [26] - 4:4, 7:19, 15:14, 27:2, 29:8, 32:19, 51:23, 81:10, 93:2, 93:5, 93:10, 94:12, 98:16, 110:15, 110:17, 111:1, 125:11, 132:20, 144:15, 144:16, 145:8, 145:9, 146:15, 148:17</p> <p>Federal [8] - 15:22, 24:8, 56:1, 124:16, 133:2, 146:6, 146:8, 146:14</p> <p>federally [1] - 148:18</p> <p>FedEx [2] - 101:14, 101:19</p> <p>feedback [1] - 122:16</p> <p>feelings [1] - 22:22</p> <p>feet [4] - 136:4, 136:24, 147:25, 148:1</p> <p>FEIS [2] - 61:19, 68:6</p> <p>felt [1] - 87:23</p> <p>female [1] - 87:18</p> <p>few [7] - 9:10, 84:10, 101:24, 111:15,</p>	<p>127:18, 138:4, 145:18</p> <p>Field [2] - 25:17, 26:1</p> <p>field [66] - 17:15, 17:16, 18:5, 25:7, 26:17, 27:11, 27:16, 28:10, 31:12, 32:1, 32:3, 32:8, 32:11, 32:12, 34:5, 37:5, 44:20, 49:5, 49:7, 49:12, 50:9, 51:8, 51:22, 63:15, 65:10, 70:3, 75:18, 87:1, 87:12, 88:13, 88:16, 90:5, 90:14, 90:24, 91:3, 91:21, 92:4, 99:11, 99:13, 99:21, 101:11, 102:4, 102:11, 105:24, 106:13, 106:24, 107:24, 108:16, 109:14, 109:21, 109:22, 110:7, 110:10, 111:7, 111:8, 112:4, 112:5, 112:6, 112:23, 117:8, 122:15, 132:15, 137:24, 140:3, 140:17, 142:5</p> <p>fields [1] - 147:19</p> <p>fight [1] - 95:11</p> <p>fighting [2] - 93:11, 143:11</p> <p>fight [1] - 95:11</p> <p>figure [4] - 10:8, 37:25, 87:10, 100:22</p> <p>figured [2] - 50:13, 50:14</p> <p>file [1] - 119:5</p> <p>fill [1] - 39:9</p> <p>filled [2] - 18:16, 76:24</p> <p>fills [1] - 42:8</p> <p>Final [1] - 9:7</p> <p>final [12] - 9:11, 9:13, 50:25, 72:11, 82:20, 134:19, 136:17, 136:18, 136:19, 137:19, 149:4, 149:6</p> <p>finalize [1] - 11:7</p> <p>finalizing [1] - 138:8</p> <p>finally [3] - 81:24, 83:25, 136:17</p> <p>financial [1] - 53:13</p> <p>fine [13] - 9:10, 47:8, 59:12, 59:13, 69:16, 80:1, 81:5, 82:13, 82:14, 82:16, 85:10, 119:3, 136:13</p> <p>finish [7] - 22:19, 79:12, 81:16, 91:10,</p>
		<p>F</p>		
		<p>face [1] - 83:15</p> <p>facets [2] - 7:4, 7:9</p> <p>facilities [1] - 25:22</p> <p>fact [13] - 17:15, 30:2, 32:4, 54:25, 58:25, 59:2, 65:23, 67:10, 69:8, 76:4, 85:2, 131:2, 142:1</p> <p>factor [2] - 76:20,</p>		

<p>95:20, 123:5, 123:15 finished [2] - 79:13, 79:14 fired [1] - 131:9 firmed [1] - 39:15 firms [3] - 56:10, 125:1, 125:23 first [34] - 4:15, 5:16, 9:21, 9:22, 11:18, 15:22, 18:8, 27:12, 29:17, 31:23, 37:25, 40:16, 48:9, 64:10, 77:7, 88:24, 89:9, 99:16, 99:19, 100:7, 102:23, 114:16, 121:24, 122:13, 126:13, 127:15, 129:18, 129:22, 130:13, 130:16, 130:23, 131:3, 139:13, 141:3 Fisher [2] - 1:22, 18:17 FISHER [9] - 18:17, 102:24, 120:8, 121:1, 121:4, 142:15, 142:24, 143:2, 143:4 fit [2] - 118:3, 118:4 five [2] - 41:3, 42:2 fix [2] - 93:24, 94:4 fixed [1] - 82:6 Flandreau [2] - 1:22, 18:15 flat [1] - 147:21 flesh [1] - 121:21 fleshed [2] - 64:17, 64:19 flexible [1] - 131:18 floating [1] - 123:22 floor [1] - 101:24 Flourames [4] - 42:19, 43:2, 43:4, 43:7 flow [1] - 131:13 flowchart [1] - 147:1 focus [4] - 38:15, 112:1, 113:8, 128:25 focuses [1] - 18:23 focusing [1] - 130:20 folk [1] - 48:14 folks [23] - 7:25, 47:23, 90:14, 99:17, 100:22, 101:1, 101:4, 101:14, 102:3, 102:11, 102:12, 102:23, 103:2, 103:5, 103:13, 103:15, 103:17, 105:15, 107:1, 109:19,</p>	<p>116:2, 116:4, 129:10 follow [10] - 6:18, 19:15, 39:21, 58:10, 122:25, 124:19, 131:19, 131:20, 140:5, 141:20 followed [1] - 19:23 following [6] - 3:1, 39:8, 42:9, 42:12, 133:16, 140:9 force [1] - 48:25 Forest [4] - 1:11, 20:2, 141:17, 141:18 forget [1] - 86:20 forgets [1] - 81:25 forgetting [1] - 94:16 form [5] - 36:12, 65:24, 68:21, 95:15, 95:16 formal [1] - 66:3 forms [5] - 100:7, 100:16, 100:22, 109:3, 109:4 Fort [1] - 21:16 forth [2] - 11:8, 46:1 forward [15] - 7:20, 10:16, 10:20, 11:8, 23:22, 24:12, 55:19, 69:10, 93:24, 97:4, 113:7, 113:10, 115:5, 122:19, 126:8 forwarded [1] - 114:5 fought [2] - 52:4, 93:6 four [7] - 41:3, 42:2, 56:10, 80:25, 85:10, 130:2, 140:2 FR [1] - 133:13 frame [4] - 63:18, 90:19, 92:2, 113:12 framework [4] - 10:7, 97:17, 111:14, 146:24 frankly [1] - 131:13 fraternize [1] - 108:3 free [2] - 112:16, 119:19 freedoms [1] - 14:22 freezes [1] - 41:15 freight [2] - 20:15, 20:16 friends [1] - 21:20 front [7] - 5:22, 35:9, 36:19, 44:8, 84:12, 102:23, 111:17 Ft [5] - 1:14, 13:25, 20:8, 89:3, 116:3 fulfill [2] - 29:10, 33:17 full [5] - 20:10, 38:11, 38:16, 57:10, 129:2</p>	<p>full-time [1] - 57:10 fully [1] - 84:22 fund [2] - 35:4, 75:3 funded [3] - 113:15, 123:8, 123:9 funding [3] - 38:14, 52:10, 113:21 funds [2] - 28:5, 35:24 funerary [3] - 132:24, 144:2, 144:16 future [12] - 4:6, 4:23, 7:20, 7:21, 37:23, 57:11, 90:17, 97:9, 99:18, 115:24, 127:9, 130:11</p>	<p>GLIDDEN [132] - 4:1, 4:11, 15:13, 26:3, 26:7, 37:22, 45:5, 46:3, 48:8, 48:21, 49:18, 49:21, 52:16, 52:21, 54:10, 54:13, 54:16, 54:19, 55:21, 56:15, 56:19, 58:2, 58:6, 59:21, 60:4, 60:8, 60:12, 60:15, 60:18, 61:2, 61:25, 62:10, 62:15, 62:19, 62:23, 63:2, 63:5, 63:20, 65:11, 65:14, 65:16, 66:20, 67:1, 67:8, 67:14, 67:18, 67:24, 68:2, 68:13, 68:16, 68:23, 69:19, 69:22, 70:9, 70:22, 70:25, 72:4, 72:7, 73:23, 74:18, 75:9, 75:24, 76:3, 76:10, 76:18, 77:1, 77:9, 79:9, 79:13, 83:17, 83:24, 84:23, 85:17, 85:20, 85:24, 86:3, 89:11, 90:22, 92:16, 94:13, 94:17, 95:18, 96:10, 96:14, 96:20, 98:21, 111:20, 113:16, 114:11, 115:1, 115:8, 115:10, 115:13, 115:18, 115:23, 116:23, 117:20, 118:13, 118:18, 119:1, 119:9, 119:14, 119:18, 120:6, 120:10, 121:3, 121:5, 121:13, 121:24, 122:4, 122:12, 123:3, 123:21, 124:5, 124:8, 127:21, 129:3, 129:12, 129:20, 131:7, 131:16, 134:22, 135:21, 136:10, 136:13, 142:23, 142:25, 143:3, 144:11, 144:15, 145:19, 146:1 global [2] - 74:7, 74:11 goals [2] - 30:17, 120:13 gosh [1] - 87:22 govern [1] - 91:24 governing [1] - 51:22</p>	<p>government [6] - 7:12, 9 11:12, 79:18, 122:7, 122:8 Government [4] - 15:22, 24:8, 56:1, 124:16 government-to-government [1] - 11:12 governmental [1] - 95:15 governments [2] - 20:18, 65:2 gracious [1] - 92:20 grade [6] - 22:19, 22:20, 40:19, 40:20, 138:17, 147:23 grading [10] - 39:8, 39:16, 39:19, 40:5, 40:9, 40:16, 40:24, 40:25, 41:14, 42:7 graduate [1] - 23:6 granite [1] - 43:13 grant [1] - 9:17 granted [2] - 68:5, 126:13 Grassland [2] - 20:4, 20:5 Graves [1] - 144:17 Gray [4] - 12:13, 13:1, 93:14, 94:15 great [6] - 10:7, 16:11, 52:9, 52:23, 109:8, 136:13 greatly [1] - 127:16 grew [1] - 23:3 grievance [3] - 49:10, 113:2, 113:5 ground [9] - 34:6, 41:15, 42:8, 64:23, 87:9, 87:19, 87:20, 87:25, 109:10 grounds [2] - 22:1, 22:8 group [9] - 39:10, 89:17, 99:17, 99:20, 99:22, 102:14, 109:9, 110:22, 115:15 Group [5] - 1:10, 1:10, 15:6, 16:14, 50:6 Groups [1] - 53:15 groups [4] - 39:25, 40:1, 41:23, 43:11 grow [3] - 25:15, 43:20, 44:5 grown [1] - 109:7 grows [1] - 43:20 guarantee [2] - 42:20, 89:24</p>
G				
<p>gain [1] - 57:20 gained [1] - 109:8 game [1] - 141:25 Gap [1] - 20:3 Gary [4] - 1:17, 1:20, 13:13, 16:23 Gary's [1] - 17:6 Gavins [1] - 89:3 gender [1] - 87:16 general [4] - 8:14, 51:19, 114:25, 115:23 generally [4] - 15:11, 56:4, 73:3, 73:7 generations [1] - 81:23 genesis [2] - 82:2, 82:3 gentlemen [3] - 121:16, 122:5, 137:25 geometric [1] - 134:9 GHOST [2] - 20:6, 21:22 Ghost [6] - 2:2, 2:2, 4:8, 4:10, 20:7, 92:14 Gillette [2] - 8:7, 73:9 girlfriend [1] - 107:25 given [11] - 20:10, 52:3, 89:12, 95:10, 109:9, 109:19, 115:1, 118:4, 131:12, 141:3 glad [11] - 11:11, 14:3, 18:12, 22:6, 22:16, 22:17, 22:18, 22:22, 23:21, 138:5 Glad [1] - 22:17 Glidden [3] - 1:9, 4:3, 15:13</p>				

<p>guess ^[45] - 5:11, 6:24, 15:12, 18:23, 26:21, 27:5, 35:10, 38:15, 39:14, 41:2, 41:9, 41:22, 45:22, 49:25, 69:4, 69:15, 71:20, 73:24, 78:19, 81:5, 84:24, 84:25, 88:18, 106:6, 106:19, 107:22, 109:7, 109:9, 110:9, 111:3, 113:22, 115:14, 119:20, 128:1, 128:3, 128:5, 128:16, 130:18, 136:14, 136:15, 141:22, 142:12, 145:13, 145:14, 147:14</p> <p>guidance ^[2] - 50:22, 50:24</p> <p>guided ^[1] - 148:18</p> <p>gun ^[1] - 21:4</p> <p>gutted ^[1] - 55:4</p> <p>guy ^[3] - 18:21, 87:13, 109:12</p> <p>guys ^[7] - 22:21, 48:15, 48:18, 107:3, 124:11, 127:4, 149:9</p>	<p>harder ^[1] - 126:10</p> <p>hate ^[2] - 10:16, 83:4</p> <p>hats ^[1] - 17:13</p> <p>Hawaii ^[2] - 15:19, 15:20</p> <p>HDR ^[16] - 1:12, 1:13, 1:13, 2:3, 4:22, 7:7, 10:23, 10:24, 24:5, 24:8, 25:6, 36:17, 42:15, 50:9, 53:18</p> <p>head ^[3] - 91:12, 91:19, 118:23</p> <p>Head ^[1] - 20:7</p> <p>hear ^[6] - 53:19, 76:11, 97:5, 99:9, 119:14, 128:2</p> <p>heard ^[15] - 12:10, 14:4, 14:5, 57:8, 57:11, 91:21, 101:2, 102:7, 109:24, 121:1, 121:20, 121:23, 125:9, 125:10, 129:6</p> <p>hearing ^[7] - 17:18, 39:24, 57:12, 69:7, 77:12, 129:2, 139:15</p> <p>heavily ^[1] - 87:7</p> <p>heavy ^[5] - 36:9, 51:19, 51:20, 72:18, 129:6</p> <p>Heavy ^[1] - 130:22</p> <p>held ^[4] - 9:21, 11:19, 11:20, 95:5</p> <p>Hello ^[2] - 10:22, 16:16</p> <p>help ^[20] - 5:4, 9:5, 15:9, 15:11, 16:18, 16:24, 23:22, 23:23, 32:17, 65:4, 65:6, 65:25, 66:1, 66:2, 99:15, 116:14, 125:11, 126:25, 127:1, 127:5</p> <p>Help ^[1] - 125:11</p> <p>helped ^[2] - 61:12, 88:2</p> <p>helpful ^[4] - 5:5, 7:24, 91:4, 117:24</p> <p>helping ^[2] - 4:23, 44:10</p> <p>Henke ^[3] - 2:5, 7:1, 10:24</p> <p>HENKE ^[25] - 7:1, 38:10, 40:3, 41:24, 45:12, 56:3, 89:19, 90:1, 90:4, 107:8, 121:18, 121:20, 122:11, 124:13, 124:15, 136:16, 139:9, 140:1,</p>	<p>140:23, 141:9, 146:4, 146:20, 147:15, 147:24, 148:3</p> <p>HERB ^[6] - 7:12, 35:8, 46:15, 72:9, 74:5, 77:8</p> <p>Herb ^[7] - 1:11, 7:12, 11:15, 35:4, 35:6, 38:10, 72:7</p> <p>Herb's ^[1] - 113:22</p> <p>HEREBY ^[1] - 150:8</p> <p>heritage ^[5] - 14:18, 14:20, 33:21, 33:24, 34:20</p> <p>hesitate ^[1] - 101:14</p> <p>Hi ^[1] - 25:25</p> <p>hiatus ^[1] - 25:19</p> <p>Hidatsa ^[1] - 126:6</p> <p>hierarchy ^[1] - 51:12</p> <p>high ^[3] - 43:20, 65:4, 124:25</p> <p>high-level ^[1] - 65:4</p> <p>high-tech ^[1] - 124:25</p> <p>higher ^[2] - 98:8</p> <p>highest ^[1] - 89:21</p> <p>highlighted ^[1] - 91:4</p> <p>highway ^[1] - 51:19</p> <p>Highways ^[1] - 15:22</p> <p>Hills ^[7] - 8:10, 8:11, 8:16, 8:17, 73:9, 140:21</p> <p>himself ^[1] - 88:1</p> <p>hinderance ^[1] - 5:6</p> <p>hinge ^[2] - 59:15, 59:16</p> <p>hinges ^[2] - 59:17, 68:4</p> <p>hire ^[6] - 42:15, 43:5, 44:1, 44:15, 55:13, 114:5</p> <p>hires ^[1] - 42:15</p> <p>hiring ^[1] - 44:14</p> <p>HIS ^[14] - 4:25, 22:24, 55:16, 55:22, 113:14, 114:9, 118:2, 118:15, 118:19, 119:8, 130:12, 130:20, 131:9, 149:4</p> <p>historic ^[10] - 15:18, 23:14, 27:7, 28:6, 29:17, 33:12, 97:24, 132:1, 132:12, 132:16</p> <p>Historic ^[13] - 1:18, 5:15, 6:23, 17:10, 18:18, 19:21, 19:25, 24:6, 24:14, 29:11, 98:3, 131:20, 132:8</p>	<p>historical ^[3] - 16:20, 73:18, 93:9</p> <p>Historical ^[1] - 15:1</p> <p>histories ^[1] - 117:6</p> <p>history ^[6] - 7:24, 10:18, 28:3, 71:25, 89:1, 96:4</p> <p>hit ^[4] - 136:2, 136:5, 148:7, 148:11</p> <p>Ho ^[1] - 126:4</p> <p>Ho-Chunks ^[1] - 126:4</p> <p>hold ^[7] - 69:9, 75:7, 110:12, 125:3, 126:11, 126:20, 146:5</p> <p>holding ^[2] - 11:11, 127:3</p> <p>holds ^[2] - 18:10, 114:1</p> <p>hole ^[1] - 22:21</p> <p>holes ^[2] - 21:4, 22:25</p> <p>Holiday ^[1] - 3:2</p> <p>holy ^[1] - 97:23</p> <p>home ^[10] - 20:13, 20:14, 80:24, 81:23, 97:10, 138:23, 138:24, 143:14, 149:7</p> <p>homeland ^[1] - 80:7</p> <p>homelands ^[1] - 80:7</p> <p>homeless ^[1] - 20:15</p> <p>hometown ^[1] - 143:14</p> <p>honchos ^[2] - 91:12, 91:19</p> <p>honest ^[2] - 51:18, 144:19</p> <p>honesty ^[1] - 45:22</p> <p>hooks ^[1] - 143:22</p> <p>hope ^[15] - 5:20, 10:9, 19:7, 19:10, 33:25, 47:15, 47:21, 52:14, 64:19, 73:22, 83:8, 103:16, 120:10, 120:15, 127:4</p> <p>Hopefully ^[3] - 5:5, 10:15, 10:18</p> <p>hopefully ^[6] - 18:2, 38:15, 49:13, 57:9, 90:16, 102:15</p> <p>hoping ^[7] - 4:11, 13:4, 59:4, 75:9, 97:5, 111:15, 120:21</p> <p>Horse ^[5] - 2:8, 5:1, 5:9, 138:22, 138:23</p> <p>HORSE ^[14] - 4:25, 22:24, 55:16, 55:22, 113:14, 114:9, 118:2, 118:15, 118:19, 119:8,</p>	<p>130:12, 130:20, 131:9, 149:4</p> <p>horseback ^[1] - 22:10</p> <p>HOSKINSON ^[9] - 14:25, 128:14, 129:6, 129:10, 129:15, 130:18, 130:23, 144:12, 144:21</p> <p>Hoskinson ^[1] - 14:25</p> <p>host ^[2] - 70:3</p> <p>Hot ^[3] - 106:8, 107:18, 107:24</p> <p>hot ^[1] - 106:13</p> <p>hotel ^[1] - 109:24</p> <p>hour ^[1] - 103:11</p> <p>hours ^[1] - 90:9</p> <p>hours' ^[1] - 100:19</p> <p>house ^[3] - 44:19, 44:24, 45:13</p> <p>houses ^[1] - 21:4</p> <p>huge ^[2] - 143:20, 143:21</p> <p>HUGHES ^[1] - 150:3</p> <p>human ^[3] - 17:1, 132:24, 133:8</p> <p>hundreds ^[1] - 127:3</p> <p>hurry ^[1] - 79:6</p> <p>hypothetical ^[1] - 40:5</p>
<p>H</p>				<p>I</p>
<p>half ^[6] - 20:14, 23:11, 44:15, 66:15, 130:13, 130:16</p> <p>HALVERSON ^[12] - 19:11, 67:23, 76:7, 76:12, 76:21, 90:5, 103:9, 103:22, 104:2, 104:5, 104:14, 107:19</p> <p>Halverson ^[3] - 1:15, 19:12, 100:17</p> <p>hand ^[3] - 22:22, 77:6, 100:9</p> <p>handed ^[1] - 5:25</p> <p>handle ^[2] - 6:6, 134:18</p> <p>handled ^[1] - 106:3</p> <p>handout ^[2] - 99:1, 127:13</p> <p>handouts ^[1] - 99:1</p> <p>hands ^[1] - 77:6</p> <p>Hang ^[1] - 76:10</p> <p>happy ^[6] - 10:13, 21:23, 23:1, 25:1, 43:4, 117:25</p> <p>hard ^[4] - 83:11, 93:6, 93:20, 127:13</p>				<p>I.C ^[1] - 92:22</p> <p>I.D ^[3] - 74:15, 79:1</p> <p>Ian ^[2] - 1:11, 20:1</p> <p>ICC ^[2] - 55:2, 55:4</p> <p>idea ^[10] - 38:4, 60:10, 66:3, 66:11, 72:13, 105:23, 123:21, 136:13, 137:7</p> <p>ideas ^[3] - 35:25, 71:17, 117:16</p> <p>Identification ^[2] - 132:1, 133:6</p> <p>identification ^[18] - 26:16, 26:22, 27:12, 29:17, 30:18, 32:13, 37:25, 47:12, 47:14, 74:9, 112:1, 122:13, 128:21, 129:22, 129:24, 131:5, 138:10, 142:5</p> <p>identified ^[9] - 17:23, 26:24, 30:5, 34:7, 34:13, 34:16, 63:8, 63:14, 75:17</p> <p>identify ^[9] - 23:16, 27:2, 32:9, 32:12, 32:16, 64:4, 74:20,</p>

114:16, 133:18 identifying [5] - 30:13, 31:12, 65:3, 112:8, 126:1 lhanktonwan [2] - 17:14, 18:12 illustrious [1] - 98:24 imagine [1] - 33:16 immediately [2] - 49:6, 143:16 impact [4] - 36:7, 48:5, 73:21, 75:13 impacted [1] - 73:7 impacting [1] - 48:5 impacts [18] - 14:8, 36:11, 72:11, 72:12, 74:8, 74:22, 75:2, 75:6, 75:7, 75:19, 76:19, 80:21, 114:18, 119:23, 134:7, 134:11 impart [1] - 45:21 implement [2] - 10:1, 10:9 implementation [1] - 10:6 implemented [1] - 16:2 implications [1] - 24:25 implies [1] - 142:18 importance [5] - 18:7, 29:19, 132:3, 132:7, 133:9 important [27] - 5:25, 8:20, 14:2, 14:7, 14:21, 30:13, 36:6, 36:11, 49:16, 57:25, 61:25, 68:3, 68:10, 68:16, 81:2, 81:6, 83:1, 86:12, 93:8, 97:23, 117:9, 126:2, 131:6, 142:9, 147:13, 148:5, 148:6 imposed [2] - 10:4, 110:16 improvements [1] - 104:13 in-house [3] - 44:19, 44:24, 45:13 in-the-field [1] - 44:20 inadvertent [7] - 135:10, 136:1, 143:25, 144:1, 145:17, 145:19, 148:12 Inaudible [1] - 41:7 Inaudible) [1] - 137:24 incident [1] - 92:7 include [7] - 27:22,	70:19, 75:19, 91:8, 112:12, 112:17, 132:14 included [5] - 7:17, 82:14, 113:5, 142:24, 145:20 includes [1] - 144:16 including [11] - 14:10, 27:24, 27:25, 28:13, 29:19, 69:1, 93:5, 112:12, 132:2, 132:13, 132:17 inclusion [2] - 29:18, 132:2 incorporate [1] - 116:13 Indian [11] - 13:11, 19:7, 63:24, 64:6, 64:8, 64:14, 65:20, 66:18, 66:24, 67:2, 98:15 Indians [3] - 20:21, 21:20, 106:10 Indians' [1] - 126:11 Individual [1] - 104:24 individual [11] - 33:5, 33:20, 49:23, 88:9, 99:21, 100:2, 100:4, 103:10, 104:11, 104:18 Individually [1] - 103:13 individually [2] - 84:5, 86:9 individuals [6] - 80:24, 81:1, 100:2, 100:4, 103:11, 116:14 Individuals [1] - 83:6 industry [2] - 51:19, 57:23 influence [1] - 145:8 information [5] - 5:25, 31:2, 31:22, 33:14, 117:10 informational [2] - 29:23, 116:17 informed [3] - 24:25, 147:7, 147:8 infrastructure [3] - 97:19, 116:17, 116:18 inherent [2] - 78:6, 80:5 initiate [2] - 6:2, 57:15 initiated [1] - 67:18 initiation [1] - 70:2 initiative [2] - 57:14, 116:19 Inn [3] - 3:2, 106:8,	106:10 input [8] - 8:20, 8:25, 61:13, 71:5, 114:6, 115:5, 127:22 inquiries [1] - 99:22 insert [1] - 119:4 inserted [1] - 136:15 insertions [1] - 111:24 Inside [1] - 136:23 instance [9] - 8:21, 35:18, 35:19, 36:19, 62:11, 87:4, 87:5, 88:17, 144:5 Instead [1] - 21:2 instead [1] - 57:17 instruct [1] - 6:20 instruction [3] - 99:5, 109:19, 109:22 integrated [2] - 6:6, 23:23 intend [2] - 43:23, 133:15 intended [1] - 40:4 intentionally [1] - 115:10 inter [1] - 95:15 inter-governmental [1] - 95:15 interest [9] - 4:14, 4:16, 5:17, 53:13, 68:14, 79:17, 81:4, 82:18, 104:1 Interest [1] - 5:2 interested [4] - 28:4, 28:6, 80:4, 103:17 interesting [5] - 17:20, 108:4, 108:5, 108:17, 138:6 interface [1] - 68:8 interfacing [1] - 68:5 Intergovernmental [1] - 7:17 Internally [1] - 90:12 international [2] - 126:18 Interstate [1] - 54:23 interstate [2] - 55:6 interviews [1] - 33:13 introduce [1] - 4:13 introductions [1] - 4:12 Inuits [1] - 126:22 investigations [1] - 132:16 invited [6] - 93:6, 93:11, 94:14, 96:7, 96:13, 96:14 invoice [3] - 100:3, 104:19, 105:13 invoices [3] - 100:5,	100:20, 103:7 invoicing [1] - 105:9 involve [8] - 27:5, 27:7, 29:12, 34:23, 34:24, 96:1, 117:3, 129:22 involved [31] - 4:4, 6:16, 6:24, 11:13, 13:17, 15:15, 18:19, 18:21, 18:24, 24:24, 24:25, 25:5, 30:12, 46:6, 59:22, 83:17, 89:8, 89:12, 95:7, 95:11, 99:17, 99:18, 121:14, 124:1, 125:1, 125:15, 125:18, 126:19, 127:7, 128:3, 128:7 Involvement [4] - 28:15, 28:20, 70:8, 70:10 involvement [16] - 4:7, 4:18, 5:9, 6:7, 6:9, 6:25, 7:9, 17:11, 29:17, 30:20, 31:3, 75:10, 81:18, 130:11, 142:17 involves [1] - 139:14 involving [2] - 122:20, 131:24 Iowa [1] - 15:6 Iron [3] - 2:8, 5:7, 146:22 IRON [2] - 5:7, 146:22 irrigation [1] - 25:22 IS [14] - 4:25, 22:24, 55:16, 55:22, 113:14, 114:9, 118:2, 118:15, 118:19, 119:8, 130:12, 130:20, 131:9, 149:4 Island [1] - 12:3 isolated [1] - 26:23 issue [24] - 48:21, 49:12, 55:10, 58:21, 62:16, 66:23, 69:2, 69:16, 71:21, 79:14, 81:9, 87:14, 90:10, 90:18, 91:13, 91:17, 102:7, 103:4, 123:8, 123:24, 126:9, 129:4, 145:7, 148:4 issue's [1] - 105:21 issued [1] - 9:2 issues [41] - 7:19, 9:10, 13:7, 13:9, 23:13, 49:3, 49:5, 49:8, 51:21, 55:10, 68:8, 69:1, 75:16,	77:5, 78:24, 80:19, 11 82:21, 83:10, 83:20, 84:14, 84:16, 90:15, 91:4, 91:7, 92:4, 102:25, 105:25, 106:4, 106:5, 106:19, 111:10, 112:14, 112:23, 113:10, 120:22, 120:24, 123:3, 131:12, 137:2, 145:6 item [2] - 114:23, 145:3 items [8] - 14:17, 26:10, 26:11, 28:13, 132:25, 144:9, 144:16, 145:3 itself [6] - 27:19, 36:20, 61:10, 84:1, 115:6, 116:15
J				
Jackson [2] - 1:13, 10:22 JACKSON [9] - 10:22, 49:25, 56:9, 56:13, 109:6, 113:24, 114:22, 133:21, 137:20 James [2] - 1:19, 26:2 Jandreau [1] - 67:5 January [7] - 1:5, 3:3, 9:8, 28:16, 94:1, 150:10, 150:14 Jim [6] - 1:12, 19:24, 25:16, 107:14, 107:15, 125:18 Jim's [1] - 107:14 JoAnn [2] - 1:15, 19:17 job [18] - 23:15, 37:12, 41:2, 41:25, 44:12, 45:10, 47:7, 48:17, 55:20, 57:9, 57:10, 60:7, 66:18, 75:20, 92:3, 98:24, 104:3, 109:16 jobs [32] - 11:23, 14:10, 27:25, 28:4, 35:4, 35:18, 36:19, 42:21, 43:6, 43:7, 43:17, 43:19, 43:20, 44:5, 44:8, 44:25, 45:6, 45:12, 45:22, 46:9, 46:13, 46:21, 46:22, 46:25, 47:2, 47:4, 48:11, 48:13, 57:9, 65:3, 70:20, 71:24				

Jobs [3] - 66:23, 67:1 Jones [4] - 1:11, 2:5, 7:12, 11:10 JONES [65] - 7:12, 11:9, 35:8, 46:15, 58:3, 58:8, 59:12, 60:1, 60:5, 60:11, 60:13, 60:16, 60:19, 61:10, 62:1, 62:11, 62:21, 62:24, 63:4, 63:17, 63:21, 65:13, 65:15, 65:17, 66:24, 67:6, 67:13, 67:17, 68:1, 68:3, 68:10, 68:15, 68:20, 72:9, 74:5, 75:23, 76:1, 77:8, 86:16, 89:17, 92:21, 94:14, 94:18, 95:20, 96:13, 96:16, 97:2, 121:8, 121:16, 121:19, 122:3, 123:5, 123:15, 123:23, 124:7, 124:9, 124:14, 124:16, 124:24, 130:22, 131:10, 134:21, 134:23, 135:22, 136:11 Joyce [3] - 1:21, 17:9, 107:15 JTAC [1] - 97:18 judge [1] - 146:11 jump [4] - 54:17, 60:25, 62:3, 128:21 jumped [3] - 20:15, 88:12, 110:10 jumping [1] - 87:20 jurisdiction [1] - 98:17 jurisdictions [1] - 98:15	20:23, 21:15, 24:9, 26:8, 31:10, 36:17, 36:23, 47:9, 52:14, 53:10, 55:15, 56:23, 68:4, 70:6, 70:17, 72:6, 74:7, 74:11, 74:22, 75:11, 88:15, 102:13, 102:14, 104:9, 107:2, 108:4, 117:8, 122:25, 123:25, 124:3, 125:21, 128:2, 133:19, 136:9, 137:18, 144:23, 148:25 Kind [1] - 17:3 kindly [1] - 92:20 kinds [5] - 21:17, 49:5, 68:25, 86:5, 90:23 Kiowas [1] - 126:5 knowing [4] - 41:8, 78:3, 131:11, 135:1 Knowing [1] - 21:7 knowledge [1] - 87:2 known [1] - 105:6 knows [2] - 17:24, 22:13	22:9 laptop [1] - 115:15 Laramie [1] - 21:17 large [4] - 39:10, 56:21, 56:25, 101:1 larger [3] - 43:23, 143:6, 143:13 largest [1] - 54:22 LAROM [1] - 25:25 Larom [2] - 1:19, 25:25 Last [2] - 14:3, 140:22 last [11] - 9:19, 15:17, 35:16, 99:11, 110:10, 111:4, 113:1, 119:16, 133:22, 134:13, 138:4 late [5] - 54:24, 58:3, 70:6, 86:14, 133:8 lately [1] - 126:13 latitude [1] - 137:4 laughter [1] - 148:23 launch [1] - 137:13 law [13] - 5:10, 19:15, 98:6, 111:2, 135:5, 135:23, 144:4, 144:21, 144:24, 144:25, 145:2, 145:25, 148:11 Law [1] - 118:3 laws [5] - 98:18, 144:15, 144:18, 144:19, 144:20 lawyer [4] - 146:4, 146:13, 148:22, 148:23 lawyers [1] - 147:14 lays [2] - 145:21, 147:1 lead [11] - 4:4, 15:14, 29:7, 81:10, 97:24, 98:5, 98:9, 110:15, 144:14, 145:8, 148:17 leaders [3] - 118:6, 118:7, 122:9 leadership [1] - 13:2 leading [2] - 84:24, 97:14 leadoff [1] - 145:10 league [1] - 125:23 learn [6] - 5:3, 5:4, 5:10, 19:3, 22:7, 25:15 learned [2] - 23:6, 99:8 learning [9] - 5:12, 6:12, 17:1, 17:5, 17:8, 19:6, 57:5,	57:6 least [22] - 13:11, 24:20, 35:20, 39:17, 39:18, 41:3, 43:8, 56:2, 77:17, 80:14, 81:18, 83:2, 84:2, 96:1, 109:3, 111:14, 113:6, 118:5, 118:22, 121:21, 137:6, 138:9 leave [3] - 83:5, 106:21, 137:25 led [1] - 148:18 leery [3] - 80:22, 88:10, 89:16 left [3] - 112:10, 115:8, 117:20 leg [1] - 88:12 legal [6] - 97:17, 146:24, 146:25, 147:13, 148:18, 148:19 legislation [1] - 97:19 legitimize [1] - 14:15 length [2] - 42:18, 115:2 less [5] - 36:6, 103:16, 118:16, 124:13, 134:6 letter [3] - 6:2, 52:19, 52:23 letting [2] - 91:20, 97:6 level [11] - 44:4, 51:24, 65:4, 82:21, 88:5, 89:21, 98:8, 146:3, 146:15 levels [2] - 43:5, 79:19 liaison [3] - 7:14, 14:1, 49:1 liberties [1] - 14:22 lieu [1] - 77:20 life [3] - 22:4, 65:19, 65:20 lifetime [1] - 143:19 likely [1] - 73:10 liken [1] - 96:2 limit [1] - 86:1 limited [6] - 22:4, 50:15, 55:17, 70:19, 73:14, 81:18 limits [1] - 134:8 line [18] - 8:6, 9:6, 11:15, 11:16, 11:24, 36:8, 40:10, 60:23, 64:4, 85:25, 90:22, 101:4, 114:23, 133:23, 143:14, 143:16, 147:7 lines [2] - 73:1, 146:23	list [4] - 56:11, 56:15, 1294:19, 110:19 listed [5] - 31:21, 59:5, 93:6, 102:25, 132:6 listen [5] - 6:20, 17:11, 22:2, 24:16, 78:17 listening [2] - 141:23, 149:5 listens [1] - 19:7 literally [3] - 32:11, 53:7, 126:16 literature [1] - 132:15 LITTLE [2] - 20:6, 21:22 lived [1] - 7:14 local [1] - 67:3 located [2] - 13:14, 144:2 lodging [2] - 106:5, 106:6 logic [1] - 124:19 logical [1] - 24:13 long-term [7] - 43:20, 44:12, 46:9, 64:5, 64:13, 65:7, 117:2 look [38] - 7:20, 10:16, 10:20, 11:8, 13:4, 14:7, 17:20, 18:3, 26:15, 30:4, 30:15, 32:3, 32:8, 37:10, 37:11, 51:3, 52:12, 55:17, 63:9, 68:12, 68:20, 68:23, 72:16, 72:17, 74:18, 77:25, 83:15, 88:21, 93:4, 96:8, 112:7, 112:21, 114:17, 117:17, 127:18, 141:4, 143:6, 143:13 looked [7] - 9:9, 56:4, 71:4, 79:5, 134:5, 137:11, 138:15 looking [26] - 21:25, 26:11, 33:19, 33:20, 34:19, 36:2, 36:18, 39:7, 42:25, 43:2, 47:6, 57:10, 57:22, 57:23, 58:12, 63:5, 63:7, 82:19, 106:23, 120:19, 133:15, 136:18, 139:1, 139:8, 147:9, 148:8 looks [2] - 71:23, 111:9 lose [1] - 57:19 losing [1] - 72:5 loss [1] - 57:25 lost [5] - 60:3, 65:18, 72:6, 101:17, 146:20 loud [2] - 76:12, 77:10
K	L			
Kangas [4] - 1:19, 25:16, 26:2, 125:18 KANGAS [1] - 25:16 keep [3] - 129:2, 134:15, 145:9 keeping [1] - 111:13 kept [2] - 21:17, 145:9 Kevin [7] - 11:22, 46:17, 46:18, 65:23, 125:10, 126:14, 127:10 Kevin's [2] - 43:11, 66:10 key [2] - 26:22, 43:22 kids [1] - 127:1 kind [39] - 10:19,	laborers [1] - 43:6 lack [1] - 136:14 lady [1] - 87:23 laid [1] - 71:2 Lake [4] - 2:2, 2:2, 20:8, 22:10 Lakota [1] - 126:2 Land [3] - 13:14, 13:21, 141:19 land [11] - 8:18, 12:3, 13:6, 13:17, 80:6, 98:15, 98:16, 133:3, 141:18, 144:8, 145:11 landowner [3] - 137:2, 144:6, 146:18 landowners [2] - 140:18, 148:10 lands [7] - 132:21, 144:6, 144:16, 144:19, 148:20, 149:2 landscape [1] - 39:20 language [11] - 18:8, 18:9, 18:10, 18:11, 28:3, 71:25, 115:20, 119:4, 119:6, 119:25, 120:2 language) [2] - 21:21,	lead [11] - 4:4, 15:14, 29:7, 81:10, 97:24, 98:5, 98:9, 110:15, 144:14, 145:8, 148:17 leaders [3] - 118:6, 118:7, 122:9 leadership [1] - 13:2 leading [2] - 84:24, 97:14 leadoff [1] - 145:10 league [1] - 125:23 learn [6] - 5:3, 5:4, 5:10, 19:3, 22:7, 25:15 learned [2] - 23:6, 99:8 learning [9] - 5:12, 6:12, 17:1, 17:5, 17:8, 19:6, 57:5,	57:6 least [22] - 13:11, 24:20, 35:20, 39:17, 39:18, 41:3, 43:8, 56:2, 77:17, 80:14, 81:18, 83:2, 84:2, 96:1, 109:3, 111:14, 113:6, 118:5, 118:22, 121:21, 137:6, 138:9 leave [3] - 83:5, 106:21, 137:25 led [1] - 148:18 leery [3] - 80:22, 88:10, 89:16 left [3] - 112:10, 115:8, 117:20 leg [1] - 88:12 legal [6] - 97:17, 146:24, 146:25, 147:13, 148:18, 148:19 legislation [1] - 97:19 legitimize [1] - 14:15 length [2] - 42:18, 115:2 less [5] - 36:6, 103:16, 118:16, 124:13, 134:6 letter [3] - 6:2, 52:19, 52:23 letting [2] - 91:20, 97:6 level [11] - 44:4, 51:24, 65:4, 82:21, 88:5, 89:21, 98:8, 146:3, 146:15 levels [2] - 43:5, 79:19 liaison [3] - 7:14, 14:1, 49:1 liberties [1] - 14:22 lieu [1] - 77:20 life [3] - 22:4, 65:19, 65:20 lifetime [1] - 143:19 likely [1] - 73:10 liken [1] - 96:2 limit [1] - 86:1 limited [6] - 22:4, 50:15, 55:17, 70:19, 73:14, 81:18 limits [1] - 134:8 line [18] - 8:6, 9:6, 11:15, 11:16, 11:24, 36:8, 40:10, 60:23, 64:4, 85:25, 90:22, 101:4, 114:23, 133:23, 143:14, 143:16, 147:7 lines [2] - 73:1, 146:23	list [4] - 56:11, 56:15, 1294:19, 110:19 listed [5] - 31:21, 59:5, 93:6, 102:25, 132:6 listen [5] - 6:20, 17:11, 22:2, 24:16, 78:17 listening [2] - 141:23, 149:5 listens [1] - 19:7 literally [3] - 32:11, 53:7, 126:16 literature [1] - 132:15 LITTLE [2] - 20:6, 21:22 lived [1] - 7:14 local [1] - 67:3 located [2] - 13:14, 144:2 lodging [2] - 106:5, 106:6 logic [1] - 124:19 logical [1] - 24:13 long-term [7] - 43:20, 44:12, 46:9, 64:5, 64:13, 65:7, 117:2 look [38] - 7:20, 10:16, 10:20, 11:8, 13:4, 14:7, 17:20, 18:3, 26:15, 30:4, 30:15, 32:3, 32:8, 37:10, 37:11, 51:3, 52:12, 55:17, 63:9, 68:12, 68:20, 68:23, 72:16, 72:17, 74:18, 77:25, 83:15, 88:21, 93:4, 96:8, 112:7, 112:21, 114:17, 117:17, 127:18, 141:4, 143:6, 143:13 looked [7] - 9:9, 56:4, 71:4, 79:5, 134:5, 137:11, 138:15 looking [26] - 21:25, 26:11, 33:19, 33:20, 34:19, 36:2, 36:18, 39:7, 42:25, 43:2, 47:6, 57:10, 57:22, 57:23, 58:12, 63:5, 63:7, 82:19, 106:23, 120:19, 133:15, 136:18, 139:1, 139:8, 147:9, 148:8 looks [2] - 71:23, 111:9 lose [1] - 57:19 losing [1] - 72:5 loss [1] - 57:25 lost [5] - 60:3, 65:18, 72:6, 101:17, 146:20 loud [2] - 76:12, 77:10

<p>Louis [23] - 1:10, 1:10, 15:6, 16:14, 50:6, 52:11, 52:18, 53:1, 53:12, 53:15, 53:22, 54:3, 54:8, 55:24, 56:3, 56:16, 57:15, 86:24, 99:6, 103:24, 104:6, 105:13, 105:17</p> <p>Lower [13] - 1:15, 2:5, 11:10, 11:24, 19:12, 58:13, 59:5, 59:6, 59:7, 59:23, 67:23, 68:1, 104:5</p> <p>lucid [1] - 97:5</p> <p>lunch [8] - 26:12, 69:25, 89:18, 91:9, 92:13, 92:15, 92:21, 98:20</p> <p>lunchtime [2] - 58:5, 86:14</p> <p>LUNDBERG [3] - 4:21, 62:18, 69:21</p> <p>Lundberg [2] - 1:13, 4:22</p> <p>luxury [1] - 110:24</p>	<p>manager [2] - 16:14, 24:5</p> <p>managing [1] - 133:2</p> <p>Mandan [1] - 126:6</p> <p>Mandan-Hidatsa-Arikara [1] - 126:6</p> <p>manipulate [1] - 142:18</p> <p>manner [2] - 81:22, 97:6</p> <p>map [5] - 17:21, 89:5, 133:23, 137:5, 146:25</p> <p>maps [1] - 88:22</p> <p>March [2] - 47:18, 139:12</p> <p>marriage [1] - 23:8</p> <p>master's [1] - 23:4</p> <p>match [2] - 41:18, 42:3</p> <p>materials [3] - 40:11, 40:18, 132:20</p> <p>math [1] - 124:22</p> <p>matter [4] - 85:2, 92:3, 106:14, 150:10</p> <p>McComsey [2] - 3:4, 150:18</p> <p>MCCOMSEY [1] - 150:5</p> <p>McDonnell [1] - 12:13</p> <p>meal [1] - 66:7</p> <p>mean [40] - 19:5, 35:14, 44:14, 46:11, 50:3, 50:11, 54:20, 58:9, 62:25, 67:17, 68:7, 71:13, 72:1, 72:7, 72:14, 75:21, 76:18, 77:2, 80:19, 85:14, 86:4, 89:7, 90:22, 96:22, 105:6, 106:6, 112:17, 119:19, 120:24, 121:3, 122:8, 123:9, 128:7, 134:3, 134:12, 135:22, 136:22, 138:11, 140:6, 141:25</p> <p>meaning [1] - 18:11</p> <p>meaningful [1] - 13:8</p> <p>meaningfully [1] - 66:17</p> <p>means [8] - 37:4, 37:8, 58:22, 64:25, 90:18, 94:24, 109:21, 148:1</p> <p>meant [1] - 120:7</p> <p>meantime [1] - 82:12</p> <p>measures [3] - 63:12, 70:14, 119:23</p> <p>meat [2] - 30:16, 62:1</p> <p>mechanism [3] -</p>	<p>52:10, 114:2, 123:12</p> <p>mechanisms [1] - 116:13</p> <p>Medicine [2] - 93:13, 94:16</p> <p>meet [8] - 10:6, 70:16, 110:10, 111:4, 112:8, 121:11, 123:20, 135:17</p> <p>meeting [21] - 5:24, 9:22, 11:20, 11:22, 20:9, 25:23, 28:18, 28:22, 30:20, 30:21, 38:21, 46:17, 46:19, 59:13, 67:17, 70:6, 91:11, 107:2, 109:2, 126:14, 129:23</p> <p>meetings [16] - 4:23, 7:21, 8:12, 8:14, 9:21, 9:24, 15:10, 21:16, 25:18, 36:24, 67:12, 67:16, 67:18, 127:18</p> <p>meets [2] - 24:13, 54:1</p> <p>Melissa [6] - 1:13, 4:12, 4:22, 62:15, 66:20, 69:19</p> <p>member [3] - 16:17, 17:7, 113:6</p> <p>members [1] - 27:10</p> <p>memorialize [2] - 45:10, 57:12</p> <p>mention [1] - 129:14</p> <p>mentioned [21] - 30:19, 32:25, 35:3, 35:17, 36:22, 45:5, 56:22, 56:23, 70:20, 86:23, 91:23, 91:24, 96:23, 108:1, 113:17, 117:4, 128:5, 128:9, 142:19, 143:5, 143:16</p> <p>mentioning [1] - 33:22</p> <p>Mentz [3] - 2:7, 5:14, 77:11</p> <p>MENTZ [20] - 5:14, 49:15, 49:19, 49:23, 77:11, 79:12, 79:14, 83:18, 83:25, 84:24, 85:18, 85:22, 86:2, 104:17, 129:8, 143:24, 144:13, 144:23, 145:23, 146:19</p> <p>mesh [1] - 120:13</p> <p>met [1] - 6:10</p> <p>methane [3] - 143:8, 147:18, 148:8</p> <p>mic [4] - 22:22, 24:2,</p>	<p>35:8, 138:1</p> <p>Michael [1] - 67:5</p> <p>Michigan [1] - 23:5</p> <p>microphone [2] - 4:13, 77:9</p> <p>mid [1] - 65:4</p> <p>mid-level [1] - 65:4</p> <p>middle [1] - 135:18</p> <p>midsummer [1] - 39:1</p> <p>might [25] - 27:21, 28:12, 29:18, 35:6, 35:14, 36:10, 36:15, 36:18, 37:14, 37:21, 39:8, 45:16, 47:2, 71:15, 72:18, 93:13, 106:24, 116:15, 116:21, 120:19, 122:8, 122:9, 130:8, 147:19, 148:22</p> <p>Mike [12] - 2:3, 22:23, 23:1, 24:11, 30:24, 44:9, 50:17, 50:22, 88:7, 91:12, 133:24, 141:5</p> <p>mileage [1] - 105:9</p> <p>miles [11] - 12:1, 12:2, 40:16, 43:15, 136:20, 137:4, 138:13, 140:24, 140:25, 141:9</p> <p>million [5] - 65:24, 124:22, 124:24, 125:22, 125:25</p> <p>mind [10] - 21:12, 37:19, 61:7, 63:12, 77:24, 90:20, 92:2, 103:8, 116:24, 138:9</p> <p>mindful [2] - 17:18, 30:1</p> <p>minds [1] - 123:2</p> <p>mine [1] - 93:5</p> <p>Mine [1] - 43:15</p> <p>mineral [1] - 148:11</p> <p>minimization [1] - 134:1</p> <p>minimize [6] - 128:24, 135:12, 135:16, 137:18, 138:10, 142:9</p> <p>minimizing [3] - 129:1, 130:25, 131:6</p> <p>minimum [2] - 41:20, 44:18</p> <p>mining [1] - 143:9</p> <p>Minnesota [12] - 8:5, 11:25, 12:4, 19:12, 23:3, 23:4, 72:25, 73:4, 76:8, 76:15, 87:6, 144:20</p> <p>minor [2] - 58:9, 58:10</p>	<p>minuscule [2] - 13</p> <p>126:12</p> <p>minute [3] - 58:6, 67:21, 148:16</p> <p>minutes [2] - 86:14, 101:25</p> <p>mislead [1] - 88:25</p> <p>miss [2] - 134:16, 137:17</p> <p>missed [2] - 89:6, 111:11</p> <p>Mississippi [1] - 8:5</p> <p>Missouri [3] - 89:2, 97:17</p> <p>misspoke [1] - 54:20</p> <p>mistake [1] - 72:2</p> <p>Mistake [1] - 72:4</p> <p>mitigate [8] - 76:13, 77:14, 79:4, 81:20, 128:24, 130:24, 135:16, 138:10</p> <p>mitigating [5] - 77:16, 78:10, 79:21, 80:18, 130:25</p> <p>mitigation [52] - 10:5, 12:23, 27:21, 35:1, 35:11, 35:13, 35:22, 35:24, 36:3, 36:16, 47:7, 47:10, 47:13, 48:4, 48:6, 50:19, 51:21, 57:17, 62:25, 63:12, 63:13, 70:14, 73:17, 75:11, 75:18, 76:20, 77:13, 77:20, 77:21, 78:15, 78:16, 78:18, 83:3, 83:5, 85:9, 85:12, 85:18, 85:23, 97:16, 114:25, 119:12, 119:17, 119:23, 120:1, 128:21, 128:23, 130:3, 130:21, 131:5, 133:17, 135:13, 142:8</p> <p>mitigative [4] - 80:11, 82:8, 84:13, 85:3</p> <p>mixing [1] - 80:22</p> <p>Mni [1] - 125:13</p> <p>MOA [47] - 12:7, 12:9, 12:20, 15:25, 27:24, 46:3, 58:13, 58:23, 58:25, 59:1, 59:2, 60:5, 60:9, 60:15, 60:24, 60:25, 61:2, 61:7, 61:10, 61:15, 61:21, 62:6, 62:7, 62:8, 62:13, 62:16, 63:22, 66:14, 69:9, 69:11, 71:21, 75:21,</p>
M				
<p>Mad [1] - 20:24</p> <p>MADSON [9] - 23:1, 90:2, 90:10, 91:14, 91:18, 92:9, 92:11, 139:24, 141:7</p> <p>Madson [5] - 2:3, 23:1, 30:24, 50:17, 50:22</p> <p>Mahas [1] - 126:3</p> <p>mail [2] - 66:6, 101:21</p> <p>mailed [2] - 93:23, 115:16</p> <p>mailings [2] - 101:10, 101:11</p> <p>main [3] - 23:15, 30:9, 111:25</p> <p>maintaining [1] - 116:17</p> <p>major [10] - 11:17, 39:16, 40:8, 40:12, 41:1, 41:4, 117:8, 120:22, 120:24</p> <p>makeup [1] - 119:3</p> <p>man [1] - 44:16</p> <p>manage [1] - 11:1</p> <p>management [5] - 6:6, 6:7, 24:19, 42:9, 91:20</p> <p>Management [2] - 13:14, 13:21</p>				

78:21, 78:23, 81:7, 83:7, 95:17, 95:21, 95:22, 95:25, 111:14, 112:13, 123:16, 123:17, 123:18, 147:10 moderation [1] - 90:14 modified [1] - 120:2 moment [1] - 57:13 Monday [2] - 136:17, 137:14 money [11] - 55:19, 66:6, 78:25, 80:22, 85:3, 102:23, 103:18, 104:3, 118:8, 121:13, 122:24 money's [2] - 127:7, 127:9 monitor [10] - 39:9, 39:18, 48:14, 48:17, 64:23, 104:2, 105:19, 123:13, 133:3 monitored [1] - 133:7 monitoring [29] - 28:9, 34:2, 34:3, 34:9, 36:22, 36:23, 37:3, 37:4, 37:5, 37:13, 37:15, 37:18, 38:18, 39:3, 39:5, 39:6, 39:10, 39:11, 39:12, 39:13, 39:23, 42:15, 45:17, 48:13, 52:7, 63:25, 64:24, 65:10, 125:16 monitors [15] - 28:11, 41:18, 42:7, 42:11, 50:3, 51:10, 87:17, 98:25, 99:4, 99:5, 99:6, 103:6, 103:23, 105:17 Montana [6] - 13:14, 13:15, 143:10, 143:20, 143:21 month [2] - 8:1, 94:1 months [4] - 44:18, 90:11, 137:14, 141:15 morning [24] - 4:21, 4:25, 5:14, 6:10, 11:9, 13:13, 13:24, 15:4, 18:17, 19:11, 19:17, 20:1, 20:6, 21:8, 25:8, 25:12, 25:13, 25:16, 35:17, 87:12, 88:9, 131:3, 135:20, 143:5 Morton [1] - 19:12	most [8] - 13:3, 22:21, 42:20, 56:5, 101:4, 106:20, 117:14, 126:2 mostly [4] - 73:7, 82:9, 98:15, 104:11 motel [1] - 106:8 MOU [2] - 53:5, 53:11 mound [1] - 76:24 move [11] - 59:19, 85:15, 113:7, 113:10, 115:5, 122:19, 133:17, 136:3, 136:4, 137:10, 142:14 moved [4] - 15:21, 71:4, 106:7, 139:11 moving [4] - 39:19, 101:11, 134:15, 143:14 Moving [2] - 63:21, 95:17 MR [252] - 4:25, 5:7, 5:14, 6:5, 6:14, 6:22, 7:1, 7:12, 10:22, 11:9, 13:13, 13:24, 15:4, 16:13, 16:16, 16:22, 16:23, 18:14, 18:17, 19:24, 20:1, 20:6, 22:24, 23:1, 24:4, 24:22, 25:8, 25:13, 25:16, 35:8, 38:10, 39:23, 40:3, 41:23, 41:24, 45:12, 46:15, 48:10, 49:15, 49:19, 49:23, 49:25, 52:6, 54:7, 54:11, 54:14, 54:17, 55:16, 55:22, 55:23, 56:3, 56:7, 56:9, 56:12, 56:13, 56:17, 57:8, 58:3, 58:8, 59:10, 59:12, 60:1, 60:5, 60:11, 60:13, 60:16, 60:19, 61:10, 62:1, 62:11, 62:21, 62:22, 62:24, 63:4, 63:17, 63:21, 65:13, 65:15, 65:17, 66:24, 67:6, 67:13, 67:17, 68:1, 68:3, 68:10, 68:15, 68:20, 69:4, 70:5, 70:11, 70:23, 71:20, 72:5, 72:9, 73:24, 74:5, 75:5, 75:23, 76:1, 77:8, 77:11, 79:12, 79:14, 83:18, 83:25, 84:24, 85:18, 85:22, 86:2, 86:16, 89:17, 89:19, 90:1,	90:2, 90:4, 90:10, 91:10, 91:14, 91:15, 91:18, 92:7, 92:9, 92:10, 92:11, 92:13, 92:21, 94:14, 94:18, 95:20, 96:13, 96:16, 97:2, 98:23, 102:9, 102:24, 103:5, 103:10, 103:25, 104:4, 104:8, 104:15, 104:17, 104:21, 105:8, 105:11, 105:14, 105:16, 105:21, 105:24, 106:16, 106:17, 106:23, 107:8, 107:10, 107:11, 107:12, 107:15, 107:16, 107:18, 107:21, 107:22, 108:25, 109:6, 111:19, 113:14, 113:24, 114:9, 114:22, 115:6, 115:9, 115:12, 115:17, 115:21, 116:1, 117:14, 118:2, 118:15, 118:19, 119:8, 119:10, 119:15, 120:4, 120:8, 121:1, 121:4, 121:8, 121:16, 121:18, 121:19, 121:20, 122:3, 122:5, 122:11, 122:22, 123:5, 123:6, 123:7, 123:15, 123:23, 124:7, 124:9, 124:13, 124:14, 124:15, 124:16, 124:23, 124:24, 128:1, 129:8, 130:12, 130:20, 130:22, 131:9, 131:10, 133:21, 134:21, 134:23, 135:22, 136:11, 136:16, 137:20, 137:25, 138:2, 139:9, 139:24, 140:1, 140:21, 140:23, 141:7, 141:9, 141:22, 142:15, 142:24, 143:2, 143:4, 143:24, 144:13, 144:23, 145:23, 146:4, 146:19, 146:20, 146:22,	147:15, 147:17, 147:24, 148:1, 148:3, 148:7, 149:4, 149:9 MS [175] - 4:1, 4:11, 4:21, 6:10, 13:20, 14:25, 15:13, 17:6, 17:9, 17:12, 19:11, 19:17, 19:20, 21:22, 25:3, 25:25, 26:3, 26:7, 37:22, 45:5, 46:3, 48:8, 48:21, 49:18, 49:21, 52:16, 52:20, 52:21, 54:10, 54:13, 54:16, 54:19, 55:21, 56:15, 56:19, 58:2, 58:6, 59:21, 60:4, 60:8, 60:12, 60:15, 60:18, 61:2, 61:25, 62:10, 62:15, 62:18, 62:19, 62:23, 63:2, 63:5, 63:20, 65:11, 65:14, 65:16, 66:20, 67:1, 67:8, 67:14, 67:18, 67:23, 67:24, 68:2, 68:13, 68:16, 68:23, 69:19, 69:21, 69:22, 70:9, 70:22, 70:25, 72:4, 72:7, 73:23, 74:18, 75:9, 75:24, 76:3, 76:7, 76:10, 76:12, 76:18, 76:21, 77:1, 77:9, 79:9, 79:13, 83:17, 83:24, 84:23, 85:17, 85:20, 85:24, 86:3, 86:18, 89:11, 89:14, 89:25, 90:5, 90:22, 92:16, 94:13, 94:17, 95:18, 96:10, 96:14, 96:20, 98:21, 102:8, 103:9, 103:22, 104:2, 104:5, 104:12, 104:14, 105:4, 107:14, 107:19, 111:20, 113:16, 114:11, 115:1, 115:8, 115:10, 115:13, 115:18, 115:23, 116:23, 117:20, 118:13, 118:18, 119:1, 119:9, 119:14, 119:18, 120:6, 120:10, 121:3, 121:5, 121:13, 121:24, 122:4, 122:12, 123:3, 123:21, 124:5, 124:8, 127:21,	128:14, 129:3, 14 129:6, 129:10, 129:12, 129:15, 129:20, 130:18, 130:23, 131:7, 131:8, 131:16, 134:22, 135:21, 136:10, 136:13, 142:23, 142:25, 143:3, 144:11, 144:12, 144:15, 144:21, 145:19, 146:1 multiple [1] - 104:10 Murphy's [1] - 118:3 must [1] - 133:7 mutual [2] - 19:8, 108:23
N				
NAGPRA [8] - 25:10, 98:2, 144:25, 145:3, 145:4, 145:24, 148:14, 148:19 Nakota [1] - 126:3 name [28] - 4:3, 4:15, 4:21, 5:14, 6:14, 6:22, 7:1, 10:22, 11:9, 13:24, 15:4, 16:13, 17:12, 18:14, 18:17, 19:11, 19:17, 19:20, 20:6, 23:1, 24:4, 24:22, 25:3, 25:8, 25:13, 25:25, 89:23, 90:1 name's [2] - 16:16, 98:23 names [1] - 112:24 narrow [1] - 136:23 Nation [5] - 25:14, 67:20, 67:24, 94:15, 113:6 nation [2] - 12:25, 125:4 National [16] - 15:20, 20:3, 20:4, 24:14, 26:25, 29:11, 29:18, 32:20, 34:14, 74:21, 98:2, 129:25, 131:20, 132:2, 132:16, 133:4 national [7] - 14:16, 14:18, 14:19, 18:1, 18:3, 101:3, 132:5 Native [5] - 28:4, 28:6, 67:1, 133:3, 144:16 native [1] - 7:14 natural [1] - 33:24				

<p>nature ^[1] - 134:8</p> <p>near ^[7] - 8:7, 40:7, 40:17, 107:4, 139:14, 143:12, 143:21</p> <p>Nebraska ^[6] - 1:20, 1:20, 17:7, 20:24, 67:20, 67:25</p> <p>nebulous ^[3] - 118:11, 119:18</p> <p>necessarily ^[2] - 106:12, 127:4</p> <p>necessary ^[2] - 111:25, 116:18</p> <p>necessities ^[2] - 66:8</p> <p>need ^[70] - 5:3, 5:17, 6:1, 16:9, 24:20, 26:16, 27:1, 27:14, 29:7, 32:9, 32:19, 32:20, 32:22, 34:8, 39:3, 39:24, 39:25, 41:18, 43:17, 44:14, 45:16, 45:19, 45:23, 55:8, 58:21, 59:16, 62:3, 64:18, 76:7, 77:2, 79:8, 82:19, 83:21, 84:18, 84:21, 86:6, 86:13, 87:1, 90:13, 93:22, 95:8, 95:10, 101:12, 101:13, 104:9, 104:13, 105:10, 106:2, 106:4, 110:11, 111:4, 113:7, 113:9, 113:10, 115:4, 115:24, 118:25, 120:16, 125:24, 127:14, 131:19, 131:20, 131:22, 131:24, 135:17, 139:2, 140:7, 147:6, 147:12</p> <p>needs ^[14] - 24:15, 24:18, 28:24, 36:7, 61:23, 64:17, 73:19, 86:7, 112:8, 118:10, 118:11, 136:9, 136:15, 142:2</p> <p>negotiable ^[1] - 80:10</p> <p>negotiate ^[6] - 21:9, 98:11, 107:19, 122:10, 123:1, 125:16</p> <p>negotiating ^[3] - 34:25, 122:9, 124:4</p> <p>neighborhood ^[1] - 118:16</p> <p>NEPA ^[3] - 71:2, 98:3, 125:22</p>	<p>never ^[10] - 21:15, 66:10, 66:12, 67:23, 84:7, 85:4, 116:5, 116:6, 147:16</p> <p>nevertheless ^[1] - 144:7</p> <p>New ^[1] - 13:21</p> <p>new ^[11] - 5:9, 7:25, 14:10, 73:8, 85:19, 105:25, 112:6, 125:7, 135:8, 135:14, 135:16</p> <p>newly ^[1] - 132:10</p> <p>next ^[13] - 8:1, 10:25, 21:8, 41:14, 44:15, 87:11, 90:19, 102:4, 111:16, 127:18, 137:8, 141:15</p> <p>nexus ^[2] - 58:19, 68:4</p> <p>NHPA ^[2] - 124:17, 133:12</p> <p>nice ^[6] - 11:16, 25:23, 54:18, 103:13, 103:19, 106:24</p> <p>night ^[2] - 21:7, 90:18</p> <p>nine ^[2] - 93:25, 95:7</p> <p>Nine ^[1] - 94:2</p> <p>nobody ^[1] - 21:10</p> <p>Nobody's ^[1] - 130:8</p> <p>non ^[4] - 19:7, 20:21, 21:20, 98:15</p> <p>non-Indian ^[2] - 19:7, 98:15</p> <p>non-Indians ^[2] - 20:21, 21:20</p> <p>noncultural ^[1] - 136:5</p> <p>none ^[2] - 21:17, 58:24</p> <p>nonmonitoring ^[1] - 60:7</p> <p>nonsignatory ^[2] - 69:14, 147:2</p> <p>North ^[3] - 11:19, 20:8, 94:2</p> <p>northeastern ^[2] - 20:5, 143:9</p> <p>northern ^[1] - 8:9</p> <p>Northern ^[6] - 1:15, 1:22, 18:18, 19:18, 126:3, 143:12</p> <p>Notary ^[3] - 3:5, 150:6, 150:18</p> <p>note ^[5] - 26:9, 69:19, 88:6, 88:22, 136:19</p> <p>noted ^[1] - 28:1</p> <p>notes ^[1] - 97:13</p> <p>nother ^[1] - 136:6</p> <p>nothing ^[4] - 84:7, 110:7, 126:16, 145:14</p>	<p>145:14</p> <p>notice ^[1] - 140:18</p> <p>notification ^[1] - 140:5</p> <p>notify ^[1] - 140:9</p> <p>notion ^[1] - 64:25</p> <p>November ^[1] - 90:11</p> <p>nowadays ^[1] - 20:17</p> <p>Number ^[4] - 63:22, 129:24, 130:1</p> <p>number ^[24] - 8:8, 15:19, 27:8, 30:25, 35:21, 36:2, 36:3, 39:17, 40:2, 41:12, 41:20, 56:21, 57:3, 60:25, 61:15, 70:3, 71:3, 72:12, 72:17, 77:12, 99:14, 112:10, 115:2, 130:1</p> <p>numbers ^[1] - 126:11</p> <p>numerous ^[5] - 8:12, 8:14, 42:1, 56:18</p> <p>Nunavut ^[1] - 126:22</p>	<p>offered ^[1] - 35:2</p> <p>offering ^[2] - 81:14, 85:10</p> <p>Office ^[11] - 1:18, 13:15, 18:19, 19:25, 25:10, 25:17, 26:1, 54:9, 64:17, 101:16</p> <p>office ^[10] - 10:25, 14:12, 24:8, 54:11, 101:4, 105:12, 105:18, 105:19</p> <p>Officer ^[5] - 5:15, 6:23, 17:10, 19:22, 132:9</p> <p>officer ^[2] - 18:16, 19:13</p> <p>offices ^[2] - 43:2, 101:5</p> <p>offset ^[8] - 72:16, 73:2, 73:20, 77:15, 77:20, 82:12, 85:3, 85:11</p> <p>Oglala ^[4] - 1:21, 11:20, 11:21, 17:9</p> <p>Oklahoma ^[2] - 59:2, 67:24</p> <p>older ^[1] - 86:19</p> <p>OLSON ^[9] - 14:25, 128:14, 129:6, 129:10, 129:15, 130:18, 130:23, 144:12, 144:21</p> <p>Olson ^[2] - 1:18, 14:25</p> <p>Omaha ^[5] - 2:3, 2:4, 16:17, 16:22, 48:10</p> <p>on-line ^[1] - 60:23</p> <p>on-the-job ^[1] - 47:7</p> <p>once ^[8] - 6:1, 18:10, 41:16, 47:11, 62:4, 63:7, 129:8, 140:16</p> <p>Once ^[1] - 48:4</p> <p>One ^[22] - 10:6, 14:2, 23:6, 26:21, 26:22, 39:6, 52:16, 61:6, 64:7, 75:7, 75:11, 86:21, 87:2, 88:1, 97:15, 99:16, 99:25, 110:21, 113:16, 138:5, 142:16, 149:4</p> <p>one ^[86] - 7:8, 7:23, 8:15, 8:21, 9:22, 9:24, 10:4, 11:16, 11:18, 12:4, 15:10, 18:23, 21:14, 28:16, 36:21, 41:6, 46:20, 47:5, 47:9, 49:2, 54:22, 55:8, 56:16, 60:8, 62:11, 63:6, 65:23, 66:22, 67:21, 69:12, 71:14, 74:9,</p>	<p>75:8, 75:13, 77:2, 78:2, 78:19, 80:5, 83:19, 84:16, 87:6, 87:16, 89:4, 92:5, 100:6, 100:13, 101:8, 101:19, 102:10, 102:24, 105:24, 106:6, 106:19, 107:22, 107:23, 107:24, 108:1, 108:12, 108:19, 109:9, 113:6, 114:23, 115:13, 118:5, 118:21, 118:22, 119:10, 119:22, 125:12, 128:17, 128:19, 129:24, 130:3, 130:8, 134:5, 134:7, 138:15, 141:7, 141:20, 142:15, 146:5, 147:19</p> <p>one-page ^[1] - 11:16</p> <p>ones ^[5] - 41:5, 77:22, 77:23, 100:17, 141:6</p> <p>ongoing ^[5] - 23:25, 26:19, 32:12, 37:17, 112:6</p> <p>open ^[14] - 17:20, 18:11, 29:4, 68:24, 79:9, 85:21, 86:10, 101:24, 113:12, 117:20, 119:1, 120:17, 123:7, 130:4</p> <p>operate ^[2] - 43:12, 73:6</p> <p>operates ^[1] - 73:1</p> <p>operation ^[3] - 43:1, 45:3, 51:25</p> <p>operational ^[1] - 134:11</p> <p>operations ^[3] - 43:13, 43:16, 51:4</p> <p>operators ^[1] - 43:6</p> <p>opinion ^[3] - 61:6, 79:12, 102:10</p> <p>opinions ^[1] - 79:11</p> <p>opportunities ^[18] - 23:25, 35:19, 39:6, 45:2, 45:6, 46:4, 46:5, 46:18, 47:1, 57:9, 57:10, 57:11, 57:12, 64:6, 65:7, 65:9, 65:19, 66:18</p> <p>opportunity ^[17] - 40:11, 42:16, 44:7, 44:12, 46:21, 47:24, 52:24, 57:16, 57:20, 64:14, 68:24, 77:4,</p>
<p style="text-align: center;">O</p>				
<p>o'clock ^[1] - 26:13</p> <p>object ^[2] - 62:7, 69:8</p> <p>objected ^[1] - 60:20</p> <p>objecting ^[1] - 94:5</p> <p>objection ^[2] - 123:16, 123:19</p> <p>objections ^[1] - 94:20</p> <p>objects ^[1] - 144:2</p> <p>obligation ^[1] - 61:16</p> <p>observe ^[1] - 34:6</p> <p>observing ^[1] - 28:11</p> <p>obtains ^[1] - 64:3</p> <p>obvious ^[1] - 89:6</p> <p>obviously ^[15] - 7:3, 7:8, 42:5, 43:1, 44:15, 46:7, 46:11, 63:7, 63:15, 71:6, 71:9, 71:13, 81:3, 122:1, 136:19</p> <p>Obviously ^[5] - 41:13, 42:23, 45:15, 72:11, 137:2</p> <p>occur ^[4] - 27:16, 28:10, 74:19, 145:21</p> <p>occurred ^[1] - 99:11</p> <p>occurring ^[1] - 130:11</p> <p>occurs ^[1] - 55:6</p> <p>October ^[11] - 6:11, 9:9, 28:18, 28:20, 28:21, 28:22, 30:20, 30:21, 31:4, 117:5, 133:22</p> <p>OF ^[2] - 150:1, 150:3</p> <p>offer ^[2] - 24:9, 47:24</p>				

<p>90:6, 94:3, 96:7, 117:12, 135:7</p> <p>oppose [1] - 13:3</p> <p>opposed [1] - 60:21</p> <p>oppression [1] - 127:3</p> <p>option [4] - 71:15, 101:16, 105:14, 134:13</p> <p>options [5] - 8:8, 71:15, 130:9, 134:17</p> <p>oral [3] - 28:3, 71:25, 117:6</p> <p>order [10] - 20:12, 27:2, 55:14, 57:19, 74:19, 77:15, 102:21, 133:4, 140:9, 140:15</p> <p>Order [1] - 133:13</p> <p>ordered [4] - 140:2, 140:5, 140:12, 149:6</p> <p>organize [1] - 15:9</p> <p>organized [1] - 109:25</p> <p>original [4] - 9:1, 9:4, 33:1, 59:25</p> <p>originally [2] - 28:21, 52:11</p> <p>originated [1] - 54:24</p> <p>otherwise [2] - 37:7, 117:19</p> <p>ourselves [4] - 4:13, 14:15, 81:22, 134:14</p> <p>outlined [4] - 32:1, 61:21, 142:5, 142:6</p> <p>outlines [2] - 70:17, 74:19</p> <p>outside [4] - 43:14, 46:8, 63:25, 132:10</p> <p>overall [8] - 38:5, 38:6, 75:13, 75:19, 113:25, 114:24, 118:9, 119:23</p> <p>overhead [1] - 105:1</p> <p>overlap [2] - 30:12, 31:8</p> <p>overriding [1] - 61:20</p> <p>overview [1] - 45:1</p> <p>own [7] - 42:10, 45:13, 62:9, 82:16, 88:5, 107:2, 135:4</p> <p>owners [1] - 141:21</p> <p>ownership [1] - 148:9</p> <p>Oyate [4] - 1:12, 1:23, 19:21, 19:25</p>	<p>61:4, 67:4, 69:2, 74:18, 77:23, 78:23, 81:7, 83:9, 83:11, 93:8, 93:10, 94:8, 94:20, 95:18, 95:24, 96:11, 96:20, 96:22, 97:8, 111:1, 111:13, 123:18, 132:25, 135:10</p> <p>p.m [2] - 26:10, 149:11</p> <p>P.R [1] - 126:24</p> <p>package [5] - 38:5, 57:16, 75:11</p> <p>packet [1] - 62:20</p> <p>page [13] - 11:16, 29:14, 29:15, 59:6, 59:7, 59:21, 59:24, 63:22, 70:10, 94:8, 94:9, 112:10, 112:20</p> <p>pages [1] - 58:13</p> <p>paid [4] - 52:13, 53:2, 53:9, 99:6</p> <p>Paige [11] - 1:18, 14:25, 128:4, 130:12, 130:17, 131:8, 131:11, 135:3, 135:19, 136:16, 144:11</p> <p>Pam [7] - 19:12, 76:6, 76:10, 91:23, 100:17, 102:7, 107:15</p> <p>Pamela [1] - 1:15</p> <p>parade [1] - 88:20</p> <p>paragraph [3] - 112:18, 115:7, 116:19</p> <p>parity [2] - 14:13, 106:15</p> <p>Park [1] - 15:20</p> <p>part [32] - 6:19, 18:24, 23:2, 23:21, 27:4, 27:12, 28:8, 32:23, 45:2, 45:3, 46:1, 46:3, 48:21, 51:11, 54:24, 59:25, 63:10, 63:11, 81:6, 84:15, 85:11, 90:17, 91:2, 93:14, 98:13, 111:11, 113:25, 114:20, 122:13, 128:3, 140:17, 148:13</p> <p>Part [2] - 84:4</p> <p>participants [4] - 27:16, 46:9, 93:1, 117:22</p> <p>participate [1] - 25:15</p> <p>participated [2] - 67:11</p>	<p>participating [1] - 32:11</p> <p>participation [2] - 26:18, 112:6</p> <p>particular [8] - 20:17, 32:2, 51:1, 52:5, 74:12, 82:4, 92:7, 108:19</p> <p>particularly [7] - 34:25, 44:13, 77:23, 82:4, 112:22, 132:20, 149:2</p> <p>parties [1] - 24:15</p> <p>party [5] - 53:4, 55:14, 56:14, 61:18, 147:5</p> <p>pass [4] - 12:25, 24:2, 99:2, 137:2</p> <p>passes [1] - 11:25</p> <p>past [9] - 19:13, 43:11, 73:13, 76:16, 78:24, 80:19, 90:11, 125:10, 125:13</p> <p>paste [1] - 119:6</p> <p>Patty's [1] - 139:12</p> <p>Pawnee [2] - 67:20, 67:24</p> <p>Pawnees [1] - 126:5</p> <p>pay [10] - 72:2, 72:3, 100:11, 103:6, 103:11, 103:13, 104:10, 104:25, 105:1, 110:5</p> <p>paycheck [1] - 102:17</p> <p>paychecks [1] - 102:21</p> <p>paying [1] - 89:20</p> <p>payment [3] - 71:24, 97:22, 100:10</p> <p>Peace [1] - 21:16</p> <p>peace [3] - 21:3, 21:5, 21:15</p> <p>peak [1] - 42:21</p> <p>Peck [3] - 1:14, 13:25, 116:3</p> <p>pedestrian [1] - 134:24</p> <p>People [1] - 46:24</p> <p>people [72] - 5:17, 5:22, 10:17, 12:9, 12:24, 13:11, 17:19, 19:3, 20:11, 20:18, 20:21, 21:2, 21:7, 22:5, 23:16, 24:17, 33:18, 35:17, 35:23, 37:4, 37:8, 37:11, 39:12, 42:16, 42:23, 42:25, 43:2, 43:17, 44:1, 44:4, 44:11, 45:16, 47:9, 50:10, 54:21, 61:5, 62:4,</p>	<p>63:24, 64:8, 64:11, 65:5, 65:6, 65:20, 65:21, 65:25, 66:1, 66:18, 82:8, 87:7, 89:19, 91:3, 91:21, 91:24, 93:20, 94:5, 95:10, 101:11, 103:20, 109:13, 112:24, 116:9, 123:11, 125:4, 126:22, 127:13, 127:16, 140:8, 140:9</p> <p>peoples [1] - 126:6</p> <p>per [3] - 103:10, 111:1</p> <p>percent [6] - 9:10, 124:17, 124:18, 124:21, 125:20, 125:22</p> <p>perfect [1] - 107:1</p> <p>perfectly [1] - 144:19</p> <p>perform [1] - 47:3</p> <p>performance [4] - 46:24, 49:9, 92:3, 92:4</p> <p>performance-based [1] - 92:3</p> <p>performing [2] - 71:15, 92:5</p> <p>perhaps [9] - 26:24, 27:21, 28:5, 29:23, 36:15, 117:7, 117:11, 119:4, 146:3</p> <p>period [4] - 32:3, 32:8, 68:18, 116:25</p> <p>permanent [8] - 43:17, 44:5, 44:25, 45:3, 45:12, 46:22, 47:4, 57:10</p> <p>permission [2] - 8:2, 20:10</p> <p>permit [4] - 13:4, 64:2, 135:1, 145:5</p> <p>permitted [1] - 12:21</p> <p>permitting [1] - 7:5</p> <p>person [8] - 18:8, 87:7, 90:2, 92:11, 104:2, 107:1, 118:21</p> <p>personal [1] - 104:12</p> <p>personally [2] - 142:21, 143:18</p> <p>personnel [5] - 64:4, 64:13, 65:6, 105:24, 106:5</p> <p>perspective [10] - 19:6, 19:7, 30:14, 34:19, 36:1, 72:8, 96:3, 110:14, 112:25, 128:6</p> <p>pertains [1] - 14:17</p> <p>phase [2] - 34:10,</p>	<p>70:16</p> <p>phases [3] - 30:8, 42:25, 43:9</p> <p>phonetic [4] - 20:25, 60:2, 126:4, 147:5</p> <p>phonetic) [1] - 19:13</p> <p>photography [1] - 31:5</p> <p>physical [2] - 101:13, 101:15</p> <p>pick [1] - 94:3</p> <p>picked [1] - 56:5</p> <p>picture [6] - 13:5, 85:8, 125:20, 143:7, 143:13</p> <p>piece [3] - 64:12, 118:11, 127:1</p> <p>piecemeal [1] - 117:13</p> <p>pieces [3] - 34:21, 64:7, 139:14</p> <p>Pierre [9] - 9:23, 46:17, 46:19, 73:2, 73:4, 91:11, 105:25, 126:15, 150:13</p> <p>pilot [3] - 19:4, 56:23, 125:8</p> <p>Pine [2] - 11:25, 13:3</p> <p>pipe [2] - 21:18, 41:7</p> <p>pipeline [1] - 126:23</p> <p>pity [1] - 127:12</p> <p>place [14] - 6:11, 23:16, 34:20, 38:20, 40:18, 45:16, 47:2, 50:24, 65:25, 73:25, 82:2, 107:4, 142:10, 145:2</p> <p>places [3] - 8:20, 65:5, 142:9</p> <p>plain [1] - 98:8</p> <p>plan [71] - 4:6, 6:6, 8:5, 14:9, 16:4, 23:22, 26:11, 26:15, 27:3, 28:14, 28:17, 28:18, 28:19, 28:21, 29:24, 30:21, 31:3, 33:1, 33:3, 33:5, 34:17, 34:22, 38:10, 41:17, 43:13, 50:9, 50:14, 50:15, 50:20, 63:6, 63:11, 69:1, 69:23, 70:13, 71:10, 71:22, 75:10, 76:20, 79:2, 90:17, 111:12, 111:19, 111:23, 113:9, 114:14, 114:19, 114:21, 117:5, 120:8, 120:22, 123:17, 123:19, 124:3, 129:13, 129:21,</p>
P				
<p>P.A [32] - 15:25, 50:3, 50:16, 51:3, 58:12, 58:15, 59:1, 59:3,</p>				

<p>130:6, 131:17, 136:9, 136:14, 140:17, 142:3, 142:16, 142:17, 142:19, 142:22, 143:1, 147:10</p> <p>Plan [3] - 28:15, 70:7, 70:10</p> <p>planning [2] - 50:12, 128:8</p> <p>plans [14] - 8:19, 11:8, 32:22, 34:12, 34:13, 63:9, 70:22, 74:23, 75:1, 128:15, 128:18, 129:18, 130:7, 133:5</p> <p>plate [2] - 28:18, 64:12</p> <p>play [5] - 5:21, 69:15, 79:20, 81:5</p> <p>pleased [1] - 94:4</p> <p>plenty [1] - 68:19</p> <p>pocket [2] - 66:6, 110:5</p> <p>Point [1] - 89:3</p> <p>point [42] - 26:21, 31:1, 37:22, 43:24, 44:10, 44:12, 50:23, 61:25, 65:8, 66:9, 68:16, 69:5, 74:6, 74:25, 78:2, 79:10, 82:17, 84:9, 85:1, 87:1, 92:24, 92:25, 97:15, 100:16, 110:11, 111:11, 118:3, 118:19, 124:4, 129:9, 130:13, 130:14, 130:15, 131:7, 131:11, 131:14, 131:15, 134:17, 136:21, 137:9, 139:7, 143:21</p> <p>points [3] - 11:17, 78:2, 111:16</p> <p>policy [1] - 93:17</p> <p>politics [1] - 135:15</p> <p>Ponca [4] - 1:20, 1:20, 16:23, 17:7</p> <p>poorest [3] - 12:24, 65:5, 125:4</p> <p>popped [2] - 88:13, 148:25</p> <p>Popular [1] - 28:2</p> <p>portion [4] - 73:8, 113:14, 114:1, 122:9</p> <p>portions [1] - 89:2</p> <p>posed [1] - 143:24</p> <p>position [8] - 7:5, 17:4, 18:16, 24:9, 45:9, 85:5, 98:11,</p>	<p>123:25</p> <p>positions [2] - 45:7, 45:11</p> <p>positive [1] - 101:6</p> <p>possibilities [3] - 44:13, 130:4, 147:7</p> <p>possibility [1] - 46:10</p> <p>possible [6] - 20:9, 32:17, 43:25, 102:22, 123:20, 142:7</p> <p>Post [1] - 101:15</p> <p>Postal [1] - 101:20</p> <p>potential [4] - 29:23, 63:12, 76:23, 132:11</p> <p>potentially [4] - 17:24, 75:19, 119:21, 145:3</p> <p>poverty [1] - 48:11</p> <p>Powder [6] - 8:7, 8:9, 138:19, 138:22, 139:2, 143:7</p> <p>power [4] - 55:3, 96:11, 96:21, 143:21</p> <p>practices [1] - 42:9</p> <p>practitioners [1] - 13:7</p> <p>Prairie [1] - 12:3</p> <p>prayer [3] - 4:9, 4:10, 92:14</p> <p>PRB [1] - 7:2</p> <p>pre [2] - 56:9, 56:11</p> <p>Pre [2] - 56:12, 56:13</p> <p>pre-qualified [2] - 56:9, 56:11</p> <p>Pre-qualified [2] - 56:12, 56:13</p> <p>precisely [3] - 52:22, 71:18, 86:7</p> <p>preclude [2] - 62:8, 62:13</p> <p>precluding [1] - 84:11</p> <p>preempt [1] - 80:3</p> <p>preemptive [1] - 91:6</p> <p>preferred [2] - 38:21, 113:20</p> <p>prejudice [1] - 88:25</p> <p>premature [2] - 122:20, 124:8</p> <p>presence [2] - 81:6, 91:11</p> <p>PRESENT [2] - 1:8, 2:1</p> <p>presenting [1] - 126:14</p> <p>preservation [6] - 15:18, 18:25, 28:3, 28:7, 66:16, 72:1</p> <p>Preservation [14] - 1:18, 5:15, 6:23, 17:10, 18:18, 19:22,</p>	<p>19:25, 24:7, 24:14, 25:10, 29:11, 98:3, 131:20, 132:8</p> <p>preservations [1] - 16:20</p> <p>preserve [2] - 22:1, 125:5</p> <p>preserving [3] - 14:16, 33:24</p> <p>president [2] - 7:2, 46:19</p> <p>presidents [1] - 101:8</p> <p>pretty [14] - 5:9, 29:12, 30:7, 34:23, 43:4, 44:7, 49:6, 53:24, 55:4, 87:12, 112:12, 115:7, 136:23, 140:8</p> <p>previously [1] - 124:2</p> <p>price [10] - 77:16, 78:5, 78:11, 78:18, 79:21, 81:19, 85:6, 86:5, 120:4, 127:16</p> <p>primarily [3] - 4:6, 29:2, 144:23</p> <p>primary [5] - 18:23, 55:5, 95:22, 96:6, 96:7</p> <p>principles [1] - 134:10</p> <p>priority [1] - 18:8</p> <p>private [4] - 98:15, 144:6, 144:18, 148:9</p> <p>problem [4] - 49:8, 82:21, 102:6, 138:16</p> <p>problems [17] - 52:12, 80:17, 99:11, 99:14, 99:22, 99:23, 99:24, 100:6, 100:24, 101:10, 101:17, 102:1, 102:10, 102:11, 103:20, 105:9, 134:14</p> <p>procedure [5] - 123:1, 140:4, 141:18, 141:19, 141:20</p> <p>procedures [2] - 115:21, 132:22</p> <p>Proceedings [1] - 1:5</p> <p>proceedings [4] - 3:1, 149:11, 150:9, 150:12</p> <p>process [104] - 5:5, 5:21, 6:17, 6:20, 7:5, 7:22, 7:25, 8:13, 9:2, 9:20, 10:11, 16:25, 17:5, 19:23, 23:2, 23:21, 24:14, 29:13, 30:8, 30:10, 30:13, 30:17, 31:10, 31:25, 32:1, 32:10, 34:8, 37:1, 39:22, 41:11,</p>	<p>42:5, 45:14, 47:12, 47:14, 47:16, 47:21, 47:23, 47:25, 48:19, 49:10, 50:15, 50:20, 50:21, 50:23, 51:8, 57:5, 57:6, 63:10, 67:19, 70:1, 71:2, 73:11, 74:9, 74:15, 77:21, 78:15, 79:6, 80:12, 83:3, 83:19, 84:1, 84:6, 84:12, 84:16, 85:4, 85:11, 93:21, 109:7, 109:15, 112:3, 112:4, 112:5, 113:25, 114:6, 114:13, 114:15, 116:15, 122:12, 122:19, 128:3, 129:20, 129:22, 131:3, 131:4, 131:19, 133:16, 133:22, 134:15, 137:9, 137:20, 138:11, 139:3, 139:10, 139:19, 140:19, 141:10, 142:5, 142:7, 145:21, 146:7</p> <p>processes [2] - 98:2</p> <p>produced [2] - 53:25, 141:5</p> <p>product [1] - 117:9</p> <p>Professional [3] - 3:4, 150:5, 150:19</p> <p>professionally [1] - 109:20</p> <p>profile [1] - 136:19</p> <p>program [19] - 6:9, 23:12, 23:16, 23:17, 23:23, 23:24, 24:12, 24:19, 28:4, 44:17, 44:18, 63:24, 63:25, 64:11, 66:2, 72:1, 101:20, 111:9</p> <p>Programmatic [15] - 10:1, 10:2, 10:3, 10:6, 10:7, 12:12, 12:15, 12:16, 25:20, 29:9, 67:15, 93:1, 93:2, 93:4, 145:20</p> <p>programs [4] - 28:4, 35:4, 44:25, 65:3</p> <p>progress [4] - 40:13, 57:23, 57:24</p> <p>Project [3] - 7:2, 125:13, 143:7</p> <p>project [69] - 4:5, 4:7, 4:17, 4:18, 6:16, 7:6, 7:9, 11:2, 11:6,</p>	<p>12:25, 13:9, 13:17, 17 15:15, 15:16, 15:20, 16:14, 17:23, 19:5, 23:10, 24:9, 25:1, 25:5, 29:9, 33:2, 33:11, 34:11, 34:18, 35:14, 35:18, 36:20, 37:15, 38:6, 40:2, 42:22, 43:8, 53:6, 56:18, 56:21, 56:22, 56:23, 57:1, 59:23, 70:1, 70:16, 75:13, 79:20, 109:16, 110:15, 110:19, 112:20, 115:3, 117:2, 119:24, 124:11, 124:12, 125:8, 125:11, 125:12, 125:19, 126:8, 126:25, 133:2, 133:6, 134:15, 148:18</p> <p>project's [2] - 30:5, 132:5</p> <p>projects [5] - 18:22, 40:1, 51:20, 79:20, 83:21</p> <p>prolong [1] - 116:6</p> <p>prong [1] - 112:3</p> <p>pronged [1] - 75:11</p> <p>proof [2] - 66:15, 66:16</p> <p>properly [1] - 133:10</p> <p>properties [39] - 17:20, 26:16, 26:23, 27:13, 29:17, 29:19, 29:24, 30:5, 30:6, 30:13, 30:18, 32:5, 32:14, 32:16, 34:15, 34:17, 38:8, 57:25, 63:8, 63:14, 74:24, 115:4, 122:18, 132:1, 132:3, 132:6, 132:12, 132:17, 133:9, 134:2, 139:17, 139:25, 140:3, 140:6, 140:13, 146:12, 146:16, 146:17</p> <p>property [5] - 139:14, 139:20, 140:10, 140:14, 146:18</p> <p>proposal [3] - 142:4, 142:25</p> <p>propose [3] - 99:16, 103:4, 103:5</p> <p>proposed [7] - 28:22, 42:19, 99:15, 113:2, 113:15, 113:25, 147:11</p>
--	---	--	---	---

<p>proposing [3] - 77:14, 77:20, 114:12</p> <p>protect [1] - 19:16</p> <p>Protection [1] - 144:17</p> <p>protocol [2] - 88:8, 90:25</p> <p>protocols [2] - 86:21, 90:23</p> <p>prove [1] - 84:1</p> <p>provide [7] - 24:11, 31:20, 31:21, 32:7, 117:24, 122:15, 126:25</p> <p>provided [3] - 52:23, 84:2, 132:25</p> <p>provides [1] - 33:5</p> <p>providing [2] - 65:21, 81:16</p> <p>provision [3] - 61:14, 61:15, 145:20</p> <p>provisions [4] - 15:24, 16:2, 51:22, 133:11</p> <p>Provost [3] - 2:3, 16:22, 48:10</p> <p>PROVOST [2] - 16:22, 48:10</p> <p>proximity [1] - 11:23</p> <p>Public [3] - 3:5, 150:6, 150:18</p> <p>public [5] - 8:12, 8:14, 13:17, 98:1, 106:20</p> <p>publications [1] - 28:2</p> <p>pull [3] - 7:10, 124:20, 137:3</p> <p>pulled [1] - 141:8</p> <p>purchase [1] - 65:24</p> <p>purchased [1] - 148:20</p> <p>purchasing [1] - 97:22</p> <p>purpose [3] - 11:6, 25:23, 26:15</p> <p>purposes [4] - 38:14, 59:12, 83:6, 134:11</p> <p>push [1] - 126:9</p> <p>pushed [1] - 50:8</p> <p>pushes [2] - 78:13, 81:10</p> <p>put [29] - 9:5, 9:13, 23:22, 29:2, 43:1, 45:23, 46:1, 55:18, 56:4, 61:14, 74:2, 76:7, 78:5, 81:12, 81:19, 85:6, 86:4, 94:3, 95:1, 95:12, 95:16, 98:10, 102:13, 112:18, 115:19, 119:6, 120:15, 144:8, 148:5</p> <p>putting [5] - 77:15,</p>	<p>78:11, 79:21, 82:17, 85:3</p> <p>Q</p> <p>qualification [1] - 56:4</p> <p>qualifications [3] - 17:19, 45:25, 55:24</p> <p>qualified [16] - 37:8, 43:5, 44:11, 44:19, 44:21, 44:22, 45:17, 56:5, 56:9, 56:11, 56:12, 56:13, 64:4, 64:6, 64:13, 65:6</p> <p>Quantifying [1] - 78:9</p> <p>questionable [1] - 51:5</p> <p>questioning [1] - 85:13</p> <p>questions [13] - 7:11, 10:12, 22:13, 48:8, 49:14, 54:2, 85:1, 95:19, 100:15, 102:6, 103:1, 121:6, 145:18</p> <p>quick [4] - 10:18, 49:16, 69:4, 124:22</p> <p>quickly [3] - 11:15, 49:6, 139:23</p> <p>quite [4] - 16:15, 33:16, 100:11, 141:24</p> <p>quoting [1] - 125:6</p> <p>R</p> <p>rail [2] - 64:3, 143:14</p> <p>rail's [1] - 143:19</p> <p>railroad [51] - 8:3, 8:4, 11:24, 11:25, 12:20, 13:3, 13:9, 13:17, 20:12, 22:6, 25:21, 28:23, 34:25, 39:20, 43:12, 45:4, 46:14, 52:14, 53:2, 53:5, 53:8, 53:9, 53:12, 53:21, 54:25, 55:3, 55:13, 55:14, 55:17, 57:21, 60:20, 60:22, 62:9, 64:1, 65:1, 65:19, 65:20, 72:21, 73:1, 73:19, 102:22, 118:24, 123:9, 123:10, 124:10, 124:11, 124:12, 126:17, 134:8, 136:2, 147:24</p> <p>Railroad [7] - 1:11, 4:5, 7:2, 7:13, 7:18,</p>	<p>41:5, 143:12</p> <p>railroad's [3] - 20:3, 71:8, 72:14</p> <p>railroaded [1] - 149:7</p> <p>railroads [2] - 96:4, 125:9</p> <p>railway [1] - 12:22</p> <p>rain [1] - 88:19</p> <p>raise [2] - 78:3, 89:21</p> <p>raised [2] - 78:24, 120:4</p> <p>raising [1] - 82:21</p> <p>ramifications [2] - 108:13, 108:14</p> <p>ran [1] - 8:4</p> <p>Randall [1] - 89:3</p> <p>Randy [22] - 1:10, 2:5, 7:1, 10:24, 11:5, 15:4, 16:15, 23:11, 35:9, 36:17, 37:16, 37:19, 45:5, 49:25, 50:1, 50:12, 56:2, 58:23, 73:12, 107:6, 109:13, 139:24</p> <p>Randy's [2] - 11:1, 110:14</p> <p>range [2] - 43:7, 44:3</p> <p>Rapid [4] - 3:2, 8:5, 25:17, 26:1</p> <p>Rapids [1] - 15:6</p> <p>rate [1] - 105:3</p> <p>rather [5] - 62:1, 117:12, 129:1, 130:21, 143:24</p> <p>re [1] - 127:14</p> <p>re-adjustments [1] - 127:14</p> <p>reaching [1] - 148:14</p> <p>reacting [1] - 81:15</p> <p>read [4] - 99:2, 99:10, 129:21, 131:16</p> <p>reading [1] - 58:15</p> <p>ready [6] - 42:24, 64:11, 65:6, 121:5, 136:18, 140:16</p> <p>real [9] - 17:19, 48:4, 66:15, 76:12, 97:11, 108:7, 108:18, 117:18, 124:22</p> <p>realistic [2] - 74:3, 122:22</p> <p>reality [2] - 48:6, 126:24</p> <p>realize [2] - 61:21, 61:22</p> <p>really [54] - 5:4, 16:10, 21:23, 28:2, 47:5, 47:15, 47:20, 50:18, 50:19, 58:4, 64:15, 64:17, 67:12, 68:3,</p>	<p>70:2, 71:17, 74:18, 74:25, 75:3, 78:11, 78:14, 79:18, 82:13, 84:25, 86:11, 87:23, 96:18, 101:12, 102:11, 112:1, 113:7, 113:9, 117:9, 120:12, 120:24, 123:18, 124:8, 127:21, 128:16, 128:17, 129:4, 129:13, 130:15, 130:18, 130:24, 131:6, 131:17, 133:19, 141:25, 143:6, 146:1, 147:11, 149:7</p> <p>realm [1] - 14:9</p> <p>Realtime [3] - 3:5, 150:6, 150:19</p> <p>reason [8] - 53:9, 58:15, 60:21, 61:14, 62:5, 98:7, 121:3, 142:19</p> <p>reasoning [1] - 108:7</p> <p>reasons [3] - 60:22, 78:6, 78:22</p> <p>Rec [1] - 141:19</p> <p>receive [1] - 31:18</p> <p>received [1] - 31:15</p> <p>receiving [1] - 104:3</p> <p>recently [2] - 59:22, 91:3</p> <p>recess [3] - 26:6, 92:15, 149:11</p> <p>recirculate [1] - 60:17</p> <p>Recirculate [1] - 60:18</p> <p>Reclamation [4] - 1:19, 1:19, 25:17, 26:1</p> <p>reclamation [1] - 25:21</p> <p>recognize [2] - 24:6, 91:25</p> <p>recommend [2] - 105:2, 142:20</p> <p>recommendation [2] - 30:19, 128:10</p> <p>recommendations [1] - 84:21</p> <p>recommending [2] - 30:16, 79:17</p> <p>reconvene [1] - 149:10</p> <p>record [9] - 49:17, 53:14, 66:3, 68:6, 68:22, 77:11, 86:20, 123:16, 124:19</p> <p>records [1] - 132:15</p> <p>recourse [1] - 102:11</p>	<p>recovery [11] - 71:14, 18 82:9, 128:21, 129:2, 129:4, 129:7, 129:14, 130:4, 130:8, 130:22, 133:15</p> <p>recruit [1] - 64:4</p> <p>recruitment [5] - 63:23, 64:8, 64:11, 65:3, 66:17</p> <p>recur [1] - 99:24</p> <p>Red [1] - 8:22</p> <p>redesign [2] - 138:5, 138:14</p> <p>reduce [1] - 99:14</p> <p>redundancy [1] - 120:14</p> <p>Reed [1] - 20:25</p> <p>reengaged [1] - 9:20</p> <p>reevaluation [1] - 138:14</p> <p>reference [1] - 145:24</p> <p>references [2] - 59:15, 68:11</p> <p>referred [2] - 58:16, 58:17</p> <p>referring [1] - 63:2</p> <p>refers [1] - 61:10</p> <p>refine [1] - 135:20</p> <p>reflect [1] - 82:20</p> <p>reflection [1] - 87:15</p> <p>refrain [1] - 89:18</p> <p>refuse [2] - 62:4, 62:6</p> <p>refused [1] - 62:4</p> <p>regarding [10] - 5:19, 31:21, 52:22, 57:9, 75:6, 88:8, 116:8, 132:19, 132:24, 143:24</p> <p>regards [2] - 5:19, 6:15</p> <p>Register [9] - 27:1, 29:18, 32:20, 34:14, 74:21, 130:1, 132:2, 132:16, 133:4</p> <p>registered [2] - 101:21, 132:6</p> <p>Registered [3] - 3:4, 150:5, 150:19</p> <p>regulations [6] - 5:19, 55:11, 128:23, 130:25, 131:19, 133:17</p> <p>regulatory [2] - 28:24, 131:21</p> <p>Regulatory [1] - 29:14</p> <p>related [3] - 136:3, 136:5, 136:6</p> <p>relating [1] - 63:1</p> <p>relationship [9] -</p>
---	---	---	--	---

<p>52:17, 52:22, 53:4, 56:1, 61:20, 95:16, 108:14, 138:21</p> <p>relatively [2] - 41:10, 147:21</p> <p>relatives [4] - 21:8, 21:22, 79:15, 82:16</p> <p>relevant [1] - 79:15</p> <p>relied [1] - 64:15</p> <p>relief [1] - 127:2</p> <p>relieve [1] - 127:5</p> <p>religious [6] - 29:19, 30:14, 82:25, 132:3, 132:7, 133:9</p> <p>rely [4] - 31:24, 33:12, 50:22, 50:24</p> <p>remains [3] - 132:24, 133:8, 148:13</p> <p>remanded [1] - 9:4</p> <p>remedy [1] - 99:15</p> <p>remember [7] - 12:3, 12:5, 12:8, 22:12, 66:11, 86:23, 130:19</p> <p>remind [3] - 36:24, 47:9, 72:24</p> <p>removal [1] - 72:15</p> <p>Repatriation [1] - 144:17</p> <p>repeat [1] - 83:13</p> <p>repeatedly [1] - 90:11</p> <p>replace [1] - 112:17</p> <p>report [13] - 15:10, 26:17, 31:18, 31:19, 31:21, 32:1, 37:2, 88:7, 89:25, 112:4, 112:5, 140:22, 141:3</p> <p>reported [1] - 59:13</p> <p>Reporter [6] - 3:4, 3:5, 150:6, 150:19, 150:19</p> <p>reporter [2] - 4:14, 150:9</p> <p>reporting [2] - 25:7, 36:25</p> <p>reports [15] - 30:22, 30:25, 31:9, 31:13, 31:16, 31:25, 36:25, 37:1, 48:1, 53:24, 122:15, 132:14, 138:7, 141:5</p> <p>represent [4] - 7:10, 18:12, 20:9, 24:23</p> <p>representation [1] - 65:2</p> <p>representative [6] - 25:10, 49:3, 59:14, 132:9, 132:19, 132:23</p> <p>representatives [10] - 11:21, 49:2, 52:13,</p>	<p>58:17, 68:12, 99:12, 99:21, 113:4, 118:22, 133:7</p> <p>represented [2] - 50:18, 118:25</p> <p>representing [5] - 50:9, 94:22, 97:3, 125:4</p> <p>reps [4] - 82:13, 102:3, 135:24, 142:3</p> <p>request [4] - 25:14, 94:10, 96:24, 110:1</p> <p>requested [3] - 31:2, 90:6, 91:11</p> <p>requesting [2] - 6:2, 97:7</p> <p>require [1] - 5:24</p> <p>required [2] - 29:16, 50:16</p> <p>requirement [1] - 33:17</p> <p>Requirements [1] - 29:15</p> <p>requirements [12] - 24:13, 28:24, 29:10, 51:6, 51:20, 52:3, 54:1, 119:12, 119:17, 120:1, 123:17, 131:22</p> <p>requires [1] - 72:15</p> <p>research [7] - 26:20, 27:7, 27:8, 31:5, 117:4, 117:6, 132:18</p> <p>researches [1] - 33:13</p> <p>Reservation [1] - 143:12</p> <p>reservation [7] - 8:18, 11:24, 80:25, 98:16, 143:15, 143:17, 143:21</p> <p>reservations [2] - 12:1, 48:12</p> <p>reserved [1] - 142:13</p> <p>resolution [8] - 48:23, 58:25, 67:6, 73:20, 87:9, 118:20, 147:9, 147:12</p> <p>Resolution [1] - 113:1</p> <p>resolve [2] - 99:23, 113:3</p> <p>resolved [2] - 9:11, 84:8</p> <p>resource [11] - 13:7, 13:22, 16:24, 17:2, 24:5, 24:12, 24:18, 134:2, 136:3, 136:5, 136:6</p> <p>resources [18] - 6:6, 11:3, 16:1, 25:20, 36:3, 36:6, 36:8,</p>	<p>36:9, 36:10, 38:7, 39:13, 51:5, 51:11, 116:16, 116:17, 128:16, 132:9, 132:23</p> <p>respect [9] - 20:19, 51:10, 79:25, 80:14, 80:24, 81:4, 83:8, 95:10, 109:8</p> <p>respectfully [1] - 60:21</p> <p>respects [2] - 55:1, 125:8</p> <p>respond [2] - 49:18, 54:16</p> <p>responded [2] - 49:21, 111:4</p> <p>responds [1] - 49:17</p> <p>response [5] - 49:15, 49:16, 49:19, 101:6, 121:9</p> <p>responsibilities [2] - 15:11, 131:24</p> <p>responsibility [8] - 50:8, 50:12, 78:7, 80:5, 91:23, 148:13, 148:19</p> <p>responsible [1] - 92:1</p> <p>rest [5] - 45:23, 69:23, 85:11, 140:14</p> <p>result [1] - 50:5</p> <p>resulted [1] - 133:20</p> <p>retired [1] - 24:8</p> <p>retrieval [2] - 36:9, 72:18</p> <p>review [13] - 6:1, 15:1, 15:10, 31:9, 31:13, 32:2, 37:13, 81:14, 81:16, 112:4, 112:5, 132:15</p> <p>reviewed [1] - 133:10</p> <p>reviewing [1] - 53:23</p> <p>reviews [4] - 26:17, 32:1, 37:2, 142:5</p> <p>revolution [1] - 14:5</p> <p>reworded [1] - 120:21</p> <p>RHODD [10] - 6:14, 105:24, 106:17, 107:11, 107:22, 115:17, 138:2, 147:17, 148:1, 148:7</p> <p>Rhodd [2] - 2:6, 6:14</p> <p>Ridge [2] - 11:25, 13:3</p> <p>righted [1] - 149:2</p> <p>rights [3] - 61:16, 80:10, 148:11</p> <p>Rights [1] - 64:16</p> <p>ripple [1] - 137:3</p> <p>RITCHIE [1] - 20:1</p> <p>Ritchie [2] - 1:11, 20:1</p>	<p>River [14] - 8:5, 8:7, 8:9, 25:22, 41:4, 89:2, 97:17, 138:20, 138:22, 139:2, 143:7, 143:11, 143:15</p> <p>river [1] - 21:8</p> <p>road [2] - 122:23, 146:25</p> <p>Robert [2] - 1:16, 25:14</p> <p>ROBINETTE [2] - 16:23, 17:6</p> <p>Robinette [4] - 1:20, 1:20, 16:23, 17:6</p> <p>Rock [15] - 1:17, 2:8, 5:1, 5:8, 5:15, 5:23, 6:5, 6:13, 77:12, 80:11, 82:24, 83:10, 84:3, 85:5, 146:22</p> <p>rode [1] - 20:16</p> <p>role [11] - 5:20, 5:21, 15:24, 23:20, 24:10, 52:24, 53:5, 55:5, 69:15, 87:18</p> <p>rolling [1] - 123:16</p> <p>Ron [3] - 2:8, 4:25, 22:17</p> <p>room [3] - 7:7, 73:14, 106:13</p> <p>Room [1] - 3:2</p> <p>rooms [2] - 110:1, 110:4</p> <p>Rosebud [7] - 1:18, 2:6, 2:6, 6:15, 6:23, 12:14, 24:23</p> <p>rough [1] - 38:23</p> <p>roughly [2] - 103:12, 136:24</p> <p>round [1] - 9:21</p> <p>route [11] - 8:23, 64:2, 71:2, 71:4, 72:11, 73:10, 73:11, 78:4, 79:5, 134:10, 140:25</p> <p>routes [2] - 8:21, 135:6</p> <p>rules [1] - 89:22</p> <p>run [4] - 43:25, 44:1, 51:22, 110:15</p> <p>rundown [1] - 10:19</p> <p>running [3] - 38:16, 40:20, 104:18</p> <p>Rural [1] - 125:13</p> <p>Russell [5] - 2:6, 6:22, 72:10, 77:14, 85:12</p> <p>Russell's [2] - 80:2, 129:16</p> <p>Rutson [2] - 60:2, 110:11</p>	<p style="text-align: right;">S 19</p> <p>Sacred [1] - 133:13</p> <p>sacred [5] - 19:16, 22:8, 76:23, 80:18, 97:23</p> <p>sake [3] - 14:13, 35:11, 89:17</p> <p>salesman [1] - 25:11</p> <p>Salisbury [2] - 1:16, 25:3</p> <p>SALISBURY [1] - 25:3</p> <p>Sam [2] - 1:22, 18:14</p> <p>Santee [4] - 1:16, 1:22, 18:15, 25:14</p> <p>sat [7] - 13:9, 20:22, 81:19, 95:6, 95:12, 101:8, 126:12</p> <p>satisfaction [1] - 52:2</p> <p>satisfied [1] - 24:20</p> <p>save [1] - 22:7</p> <p>saw [1] - 23:11</p> <p>scale [3] - 100:11, 103:3, 104:25</p> <p>scales [1] - 104:10</p> <p>schedule [12] - 26:8, 27:15, 32:15, 38:23, 38:25, 39:2, 41:19, 42:3, 47:21, 50:19, 70:17</p> <p>Schieffer [5] - 11:22, 46:18, 65:23, 126:14, 127:10</p> <p>scholarship [6] - 28:5, 35:3, 35:24, 71:24, 74:1, 85:11</p> <p>school [2] - 5:10, 23:7</p> <p>scientists [1] - 11:3</p> <p>scope [5] - 115:25, 121:22, 121:25, 146:23, 147:11</p> <p>scoping [1] - 124:2</p> <p>Scott [12] - 2:5, 11:10, 14:3, 58:2, 60:8, 68:13, 69:5, 71:20, 86:14, 92:19, 94:17, 121:7</p> <p>SCOTT [59] - 11:9, 58:3, 58:8, 59:12, 60:1, 60:5, 60:11, 60:13, 60:16, 60:19, 61:10, 62:1, 62:11, 62:21, 62:24, 63:4, 63:17, 63:21, 65:13, 65:15, 65:17, 66:24, 67:6, 67:13, 67:17, 68:1, 68:3, 68:10, 68:15, 68:20, 75:23, 76:1, 86:16, 89:17,</p>
---	---	--	---	--

<p>92:21, 94:14, 94:18, 95:20, 96:13, 96:16, 97:2, 121:8, 121:16, 121:19, 122:3, 123:5, 123:15, 123:23, 124:7, 124:9, 124:14, 124:16, 124:24, 130:22, 131:10, 134:21, 134:23, 135:22, 136:11</p> <p>scoundrel [1] - 148:23</p> <p>Scoundrel [1] - 147:15</p> <p>scoundrels [2] - 147:14, 147:15</p> <p>screen [1] - 137:21</p> <p>search [1] - 132:15</p> <p>season [5] - 99:12, 102:4, 111:8, 111:17, 117:8</p> <p>seasons [2] - 38:11, 38:17</p> <p>seat [1] - 4:2</p> <p>second [6] - 27:4, 64:12, 66:15, 87:14, 88:8, 145:1</p> <p>Secondly [1] - 138:18</p> <p>Secretary [1] - 7:16</p> <p>secrets [1] - 18:10</p> <p>Section [21] - 5:20, 6:3, 6:19, 6:24, 17:11, 19:19, 24:14, 25:6, 29:10, 48:18, 50:17, 50:21, 110:22, 113:1, 113:2, 114:13, 131:19, 131:21, 133:12, 133:16</p> <p>section [4] - 34:10, 48:23, 64:15, 94:7</p> <p>sections [2] - 96:23, 120:20</p> <p>see [41] - 11:11, 16:11, 20:19, 20:21, 22:17, 23:22, 27:12, 28:11, 29:14, 30:7, 32:4, 39:5, 39:19, 42:7, 42:11, 57:14, 58:10, 80:8, 81:17, 82:18, 83:4, 84:14, 88:14, 95:4, 102:22, 112:8, 112:11, 112:22, 114:7, 114:21, 116:19, 117:8, 118:13, 118:20, 128:25, 137:12, 142:14, 142:21, 145:23</p> <p>seeing [4] - 25:23,</p>	<p>39:7, 39:8, 82:10</p> <p>seek [1] - 14:22</p> <p>seeking [1] - 108:15</p> <p>seem [3] - 103:17, 106:14, 128:20</p> <p>segment [1] - 13:22</p> <p>segments [1] - 133:6</p> <p>selected [3] - 8:23, 42:6, 134:11</p> <p>selling [1] - 97:22</p> <p>send [4] - 31:16, 100:4, 121:25, 122:9</p> <p>senior [1] - 24:4</p> <p>sense [12] - 27:14, 27:19, 36:4, 47:16, 74:7, 106:20, 108:12, 135:22, 138:8, 143:18, 145:12, 148:20</p> <p>sensitivity [1] - 106:4</p> <p>sent [2] - 52:21, 101:21</p> <p>sentence [4] - 119:16, 119:19, 130:13, 130:16</p> <p>separate [6] - 39:12, 61:4, 62:12, 78:15, 110:24, 123:8</p> <p>sequencing [1] - 48:1</p> <p>series [1] - 99:11</p> <p>serious [1] - 148:24</p> <p>serve [6] - 7:13, 23:20, 97:13, 119:11, 119:16, 120:11</p> <p>served [2] - 7:15, 99:22</p> <p>Service [5] - 1:11, 20:2, 101:20, 141:17, 141:18</p> <p>service [1] - 20:13</p> <p>session [1] - 32:23</p> <p>sessions [2] - 70:4, 102:20</p> <p>set [25] - 16:6, 50:23, 51:13, 52:11, 59:25, 67:12, 90:23, 101:2, 101:20, 102:19, 103:6, 104:20, 105:7, 109:2, 110:2, 113:18, 113:19, 114:4, 114:24, 125:14, 139:15, 139:16, 139:20, 139:22</p> <p>settled [1] - 133:25</p> <p>settlement [1] - 97:19</p> <p>seven [1] - 8:24</p> <p>several [14] - 11:12, 43:11, 90:11, 99:14, 100:10, 101:7,</p>	<p>105:9, 105:21, 105:25, 124:1, 134:3, 135:6, 141:15</p> <p>shall [1] - 61:17</p> <p>shape [1] - 36:12</p> <p>share [3] - 10:13, 10:25, 86:25</p> <p>shared [1] - 102:9</p> <p>Sheridan [2] - 2:4, 16:16</p> <p>SHERIDAN [1] - 16:16</p> <p>Shinn [1] - 12:13</p> <p>shipped [1] - 20:14</p> <p>Shirt [1] - 8:22</p> <p>shocks [1] - 133:19</p> <p>shooting [1] - 21:3</p> <p>short [4] - 7:3, 26:6, 44:8, 46:7</p> <p>short-term [2] - 44:8, 46:7</p> <p>shorthand [2] - 150:8, 150:9</p> <p>shovel [6] - 87:19, 87:20, 87:24, 88:3, 88:6, 88:12</p> <p>show [4] - 92:1, 126:22, 127:11</p> <p>showed [1] - 91:12</p> <p>SHPO [4] - 81:11, 128:2, 128:4, 133:2</p> <p>shut [1] - 51:6</p> <p>side [9] - 44:6, 59:18, 66:16, 78:7, 108:9, 109:15, 127:11, 148:2</p> <p>sift [1] - 117:18</p> <p>sign [25] - 53:13, 60:23, 62:4, 62:5, 62:6, 67:7, 69:8, 77:24, 78:1, 80:1, 80:2, 81:5, 83:7, 83:11, 93:8, 94:24, 95:4, 95:10, 97:9, 97:10, 101:22, 118:7</p> <p>signatories [12] - 15:2, 62:3, 67:11, 67:19, 84:11, 93:6, 93:15, 94:10, 94:12, 94:14, 96:12, 96:25</p> <p>Signatories [2] - 94:9, 96:23</p> <p>signators [1] - 93:12</p> <p>signatory [25] - 13:18, 25:19, 59:15, 61:11, 61:17, 62:8, 63:22, 63:25, 64:5, 67:14, 69:5, 80:3, 80:9, 83:12, 95:22, 96:7, 96:9, 96:11, 96:13, 96:14, 96:15, 96:20,</p>	<p>97:3, 97:8, 147:2</p> <p>signature [14] - 58:13, 58:20, 58:21, 59:6, 59:8, 59:24, 60:3, 60:18, 60:19, 61:11, 67:3, 67:4, 69:11, 94:25</p> <p>signatures [4] - 59:25, 68:9, 84:10, 93:10</p> <p>signed [32] - 12:10, 37:2, 53:4, 53:11, 53:12, 58:14, 58:22, 58:24, 59:1, 59:2, 59:21, 59:23, 60:14, 61:9, 62:7, 67:5, 67:10, 67:15, 67:23, 69:12, 75:22, 75:24, 77:22, 78:23, 80:9, 83:9, 93:2, 94:21, 94:23, 95:6</p> <p>signer [2] - 96:6, 96:7</p> <p>significance [1] - 82:25</p> <p>significant [8] - 41:5, 43:22, 44:14, 44:16, 44:24, 71:5, 115:3, 137:6</p> <p>signing [5] - 61:23, 62:9, 93:16, 93:17, 95:2</p> <p>silver [1] - 107:17</p> <p>simple [1] - 113:24</p> <p>simply [8] - 34:10, 53:10, 55:11, 55:12, 78:23, 82:10, 125:3, 144:3</p> <p>simultaneously [3] - 41:3, 41:25, 42:1</p> <p>sing [1] - 22:15</p> <p>singled [1] - 14:20</p> <p>Sioux [40] - 1:14, 1:15, 1:16, 1:18, 1:21, 1:22, 2:6, 4:22, 5:1, 5:8, 5:15, 5:23, 6:13, 6:15, 6:24, 11:10, 12:14, 13:25, 17:9, 18:15, 19:12, 24:23, 25:14, 49:2, 58:14, 59:6, 59:7, 67:3, 67:23, 80:11, 82:24, 83:10, 84:3, 94:15, 104:5, 113:6, 116:4, 118:23, 126:15, 146:23</p> <p>Sisseton [5] - 1:12, 1:23, 19:21, 19:25, 103:7</p> <p>Sisseton-Wahpeton [5] - 1:12, 1:23, 19:21, 19:25, 103:7</p>	<p>sit [15] - 19:2, 20:19, 20:38:22, 38:24, 41:16, 45:24, 78:17, 80:8, 81:17, 83:11, 93:23, 104:9, 111:7, 125:16</p> <p>site [19] - 18:2, 40:12, 40:18, 48:13, 48:14, 48:16, 48:17, 50:18, 51:1, 71:22, 74:11, 82:3, 90:19, 90:20, 97:24, 98:1, 98:4</p> <p>Sites [1] - 133:13</p> <p>sites [79] - 17:24, 18:10, 19:16, 22:8, 23:14, 26:24, 26:25, 27:1, 29:22, 29:25, 30:2, 31:12, 31:21, 31:22, 32:4, 32:9, 32:17, 32:20, 33:20, 34:6, 34:14, 34:15, 34:16, 40:5, 40:23, 41:6, 41:10, 41:24, 42:13, 57:19, 70:15, 70:18, 70:23, 71:5, 71:6, 71:9, 71:10, 71:13, 71:19, 72:6, 72:21, 73:18, 74:12, 74:20, 75:7, 75:12, 75:17, 76:8, 76:13, 76:14, 76:15, 76:17, 76:19, 76:23, 80:18, 80:21, 81:20, 82:2, 85:7, 86:5, 87:3, 115:2, 122:17, 129:25, 130:2, 130:9, 130:24, 133:3, 135:2, 136:22, 137:5, 138:9</p> <p>sitting [12] - 21:22, 38:19, 42:24, 78:21, 80:13, 81:1, 84:12, 94:22, 100:22, 125:3, 127:8, 141:23</p> <p>situation [5] - 102:13, 102:15, 103:12, 103:17, 145:4</p> <p>situations [2] - 51:16, 100:4</p> <p>six [11] - 8:24, 39:16, 40:4, 41:9, 41:21, 42:13, 44:18, 44:20, 93:5, 138:9, 141:8</p> <p>skilled [1] - 45:7</p> <p>skipped [1] - 131:5</p> <p>sky [1] - 93:20</p> <p>slash [1] - 128:9</p> <p>slightly [1] - 124:13</p> <p>slope [1] - 137:17</p> <p>small [6] - 54:21, 55:12, 106:14,</p>
--	---	--	--	---

106:17, 108:13, 127:16 smart [1] - 66:10 Smith [2] - 1:17, 13:13 SMITH [1] - 13:13 Smithwick [1] - 40:10 smoother [1] - 105:16 smoothly [1] - 102:16 smudging [1] - 49:9 Society [1] - 15:1 socio [1] - 14:8 socio-economic [1] - 14:8 solid [1] - 95:7 solution [1] - 72:19 someone [3] - 44:15, 89:23, 126:12 someplace [2] - 36:11, 72:14 sometime [3] - 38:16, 39:1, 90:5 sometimes [1] - 37:11 somewhat [2] - 50:8, 134:8 somewhere [12] - 38:17, 39:16, 40:17, 40:20, 40:23, 41:9, 42:24, 44:3, 60:3, 133:23, 133:24, 135:17 songs [1] - 22:15 soon [2] - 32:17, 41:10 sooner [1] - 143:19 sophisticated [1] - 43:6 Sorry [4] - 52:21, 123:6, 145:18 sorry [5] - 70:9, 75:25, 76:10, 79:13, 146:5 sort [14] - 16:3, 19:4, 24:10, 39:18, 46:14, 52:24, 74:19, 89:23, 91:5, 100:21, 112:14, 128:17, 129:2, 146:25 sorts [3] - 27:15, 49:3, 77:4 sound [1] - 45:6 Sound [1] - 26:4 sounds [1] - 37:11 sources [1] - 33:12 SOUTH [1] - 150:1 south [1] - 8:17 South [16] - 1:18, 3:2, 3:6, 7:14, 8:6, 15:1, 20:4, 126:15, 140:23, 140:25, 141:9, 141:12, 144:20, 144:22,	150:7, 150:13 southeast [1] - 100:25 southeastern [2] - 143:10, 143:20 southern [2] - 8:11, 73:8 speaking [2] - 73:7, 124:19 speaks [1] - 21:20 Speaks [1] - 22:9 specialist [1] - 13:23 species [2] - 12:23, 96:2 specific [15] - 32:9, 32:17, 33:25, 34:4, 34:10, 34:22, 51:3, 75:17, 94:6, 102:25, 103:2, 110:11, 114:23, 140:4, 140:8 specifically [9] - 25:6, 28:9, 34:8, 48:24, 49:3, 63:3, 63:14, 71:1, 123:18 Specifically [1] - 61:11 specified [1] - 51:7 specifying [2] - 53:5, 53:6 spells [1] - 129:21 spend [2] - 4:18, 45:19 spiel [1] - 127:6 spinning [1] - 117:19 spirit [2] - 97:2, 111:13 Spirit [4] - 2:2, 2:2, 20:8, 22:10 spirituality [5] - 78:9, 78:10, 80:23, 81:21, 82:3 split [2] - 52:14, 145:7 spot [2] - 39:9, 43:22 spots [2] - 42:1, 42:2 SPOTTED [6] - 17:12, 24:22, 86:18, 89:14, 89:25, 104:12 Spotted [4] - 1:18, 1:21, 17:13, 24:22 Springs [3] - 17:17, 106:8, 107:24 squeezing [1] - 81:13 Sr [1] - 2:7 SRST [3] - 2:7, 2:7, 2:8 SS [1] - 150:2 St [2] - 23:4, 139:12 staff [4] - 5:2, 11:3, 55:13, 55:17 stage [3] - 29:12, 136:18, 141:24	stalled [1] - 139:3 stand [3] - 33:6, 139:10, 139:19 stand-alone [1] - 33:6 standard [1] - 125:21 standardization [1] - 100:22 standardized [2] - 100:7, 100:16 standing [3] - 52:2, 87:17, 87:22 Standing [15] - 1:17, 2:8, 5:1, 5:8, 5:15, 5:23, 6:5, 6:13, 77:12, 80:11, 82:24, 83:10, 84:3, 85:5, 146:22 standpoint [2] - 116:1, 147:13 STANFILL [1] - 24:4 Stanfill [2] - 1:12, 24:4 start [32] - 4:1, 4:8, 4:11, 4:20, 22:16, 30:22, 32:21, 40:8, 40:13, 40:22, 40:24, 40:25, 41:1, 41:3, 41:7, 44:4, 47:18, 79:21, 80:18, 80:23, 82:17, 92:19, 99:3, 99:4, 102:12, 107:12, 109:3, 124:4, 133:22, 136:17, 136:18, 137:19 started [12] - 15:21, 20:23, 21:3, 22:12, 23:10, 38:13, 41:10, 92:16, 93:21, 94:1, 109:4, 109:7 starting [5] - 31:9, 38:15, 40:20, 137:14, 137:15 starts [4] - 40:17, 40:24, 107:4, 137:8 startup [1] - 43:18 State [10] - 1:18, 3:6, 13:15, 15:1, 128:5, 141:12, 144:4, 146:7, 150:7 STATE [1] - 150:1 state [13] - 7:19, 51:23, 94:4, 110:17, 128:2, 132:20, 144:18, 144:20, 144:21, 144:24, 145:2, 145:25, 146:3 statement [2] - 53:13, 61:20 States [2] - 54:23, 126:19	states [3] - 57:22, 61:15, 144:18 status [2] - 144:8, 144:9 stay [1] - 24:24 stays [1] - 148:20 STB [31] - 8:2, 8:15, 9:1, 9:8, 9:13, 9:17, 16:15, 29:7, 33:6, 36:13, 50:6, 52:3, 53:7, 54:4, 56:4, 56:9, 56:14, 92:21, 109:13, 110:11, 113:25, 119:12, 119:17, 121:14, 131:21, 134:1, 134:23, 134:25, 144:13, 145:6, 147:5 STB's [2] - 73:16, 110:15 steepen [1] - 137:17 step [7] - 17:4, 31:10, 31:23, 64:10, 64:12, 114:14 step-by-step [1] - 114:14 steps [1] - 31:6 Steve [2] - 2:7, 6:5 still [25] - 37:2, 37:3, 49:17, 50:21, 50:24, 73:2, 76:4, 78:23, 83:10, 96:15, 98:4, 101:9, 111:6, 115:4, 120:14, 124:10, 124:11, 124:12, 130:10, 134:16, 138:25, 139:2, 142:1, 142:11, 146:17 stimulate [2] - 57:17, 57:25 stimulus [3] - 62:22, 62:23, 75:7 stipulation [2] - 46:4, 61:15 stipulations [1] - 112:13 stone [1] - 16:6 stood [1] - 20:20 stop [3] - 34:7, 41:16, 51:17 stopped [1] - 108:5 story [1] - 14:11 straight [1] - 41:15 streams [1] - 42:10 stressing [1] - 129:23 stricken [1] - 48:11 strict [1] - 89:22 strong [1] - 87:2 structure [3] - 49:4,	78:14, 116:18 21 structures [1] - 23:14 students [1] - 28:6 studies [1] - 33:12 Study [1] - 33:3 study [41] - 26:19, 27:5, 27:17, 27:19, 32:25, 33:1, 33:6, 33:7, 33:11, 33:15, 33:25, 75:10, 112:9, 112:11, 112:16, 112:19, 113:14, 114:3, 114:7, 114:8, 114:12, 114:20, 115:6, 115:14, 116:9, 116:12, 116:15, 116:23, 116:24, 118:12, 118:17, 119:11, 119:15, 119:20, 121:9, 121:10, 122:21, 128:5, 142:6 study's [1] - 115:11 stuff [9] - 17:22, 46:7, 48:18, 88:22, 88:23, 121:14, 124:18, 126:24, 139:22 subject [2] - 38:3, 77:13 submitted [2] - 60:2, 138:7 subsequent [2] - 9:24, 139:15 substances [1] - 87:4 substantially [1] - 103:16 substantive [1] - 13:8 subsurface [2] - 148:11, 149:2 subsurface-righted [1] - 149:2 sudden [3] - 48:19, 148:15, 148:25 sufficient [1] - 133:1 suggest [2] - 60:17, 118:10 suggested [3] - 32:6, 35:23, 46:18 suggesting [1] - 116:21 suggestion [2] - 119:2, 119:9 suggestions [3] - 24:11, 27:6, 35:3 Suites [1] - 106:9 suites [2] - 106:11, 107:20 summer [3] - 9:19, 80:19, 89:3 SUMMIT [1] - 1:2
--	---	--	--	--

<p>sun ^[1] - 14:4</p> <p>supervisor ^[1] - 48:17</p> <p>supplemental ^[2] - 9:11, 9:14</p> <p>support ^[10] - 16:18, 19:15, 28:2, 28:5, 42:25, 43:6, 71:24, 71:25, 73:25, 80:1</p> <p>suppose ^[1] - 87:9</p> <p>surface ^[1] - 147:21</p> <p>SURFACE ^[1] - 1:1</p> <p>Surface ^[13] - 1:9, 4:3, 8:13, 14:12, 15:7, 15:13, 48:25, 52:17, 53:16, 53:22, 54:9, 55:5, 148:16</p> <p>surprised ^[1] - 143:22</p> <p>survey ^[5] - 18:6, 33:14, 117:7, 140:11, 141:7</p> <p>surveyed ^[3] - 76:21, 141:1, 141:4</p> <p>surveys ^[5] - 26:18, 99:13, 105:20, 134:24, 141:3</p> <p>SWCA ^[3] - 1:16, 25:4, 53:19</p> <p>SWO ^[1] - 105:3</p> <p>synergy ^[1] - 116:16</p> <p>system ^[1] - 103:20</p> <p>systems ^[2] - 24:10, 86:21</p>	<p>132:13, 132:17</p> <p>teachers ^[1] - 5:13</p> <p>team ^[6] - 7:7, 7:9, 18:24, 45:15, 51:11, 89:8</p> <p>tech ^[1] - 124:25</p> <p>Tech ^[1] - 23:5</p> <p>template ^[1] - 120:11</p> <p>templates ^[2] - 117:17, 117:23</p> <p>temporary ^[3] - 45:22, 46:21, 47:2</p> <p>term ^[12] - 36:23, 43:20, 44:8, 44:12, 46:7, 46:9, 59:13, 64:5, 64:13, 65:7, 117:2, 149:7</p> <p>terminated ^[1] - 48:19</p> <p>terms ^[34] - 10:4, 28:24, 29:7, 29:16, 30:15, 30:17, 31:11, 33:17, 33:21, 37:25, 38:5, 45:7, 46:8, 53:23, 56:7, 56:8, 75:9, 75:11, 75:14, 75:20, 76:20, 81:2, 86:1, 95:5, 111:13, 112:8, 121:10, 121:11, 123:3, 124:5, 125:20, 128:14, 131:18</p> <p>TERO ^[1] - 64:16</p> <p>Terry ^[1] - 12:13</p> <p>test ^[2] - 87:24, 88:6</p> <p>testing ^[2] - 110:12, 133:1</p> <p>thankful ^[1] - 127:22</p> <p>themselves ^[6] - 93:21, 96:2, 109:14, 109:20, 109:22, 110:7</p> <p>theory ^[2] - 21:11, 143:6</p> <p>they've ^[4] - 5:2, 52:3, 62:4, 125:1</p> <p>They've ^[1] - 35:2</p> <p>thinking ^[11] - 26:3, 32:21, 35:7, 38:5, 80:25, 87:22, 113:5, 119:20, 139:6, 147:18, 148:16</p> <p>third ^[7] - 9:24, 17:23, 43:10, 53:4, 55:14, 56:14, 88:18</p> <p>third-party ^[3] - 53:4, 55:14, 56:14</p> <p>thorough ^[1] - 38:25</p> <p>thoughts ^[5] - 36:14, 47:24, 86:3, 117:15</p> <p>THPO ^[8] - 18:16,</p>	<p>18:20, 18:21, 19:13, 19:18, 25:9, 85:5, 132:18</p> <p>THPOs ^[2] - 99:21, 132:23</p> <p>three ^[23] - 7:18, 12:1, 18:19, 31:10, 37:17, 38:11, 38:16, 41:4, 41:25, 42:2, 44:15, 49:1, 56:10, 67:22, 80:6, 86:19, 112:3, 113:4, 118:21, 130:1, 134:3, 134:4, 137:14</p> <p>three-prong ^[1] - 112:3</p> <p>three-step ^[1] - 31:10</p> <p>throughout ^[3] - 4:24, 40:1, 129:23</p> <p>throwing ^[1] - 71:17</p> <p>thrown ^[2] - 17:3, 149:5</p> <p>Thunder ^[6] - 2:8, 5:1, 5:9, 20:4, 43:15, 139:14</p> <p>THUNDER ^[14] - 4:25, 22:24, 55:16, 55:22, 113:14, 114:9, 118:2, 118:15, 118:19, 119:8, 130:12, 130:20, 131:9, 149:4</p> <p>tie ^[1] - 26:17</p> <p>tied ^[1] - 18:6</p> <p>ties ^[2] - 40:10, 80:6</p> <p>Tim ^[10] - 2:7, 5:14, 6:11, 6:18, 22:17, 77:9, 77:11, 79:9, 84:5</p> <p>timely ^[1] - 10:15</p> <p>timetable ^[1] - 141:16</p> <p>timing ^[3] - 47:16, 48:1, 111:5</p> <p>Title ^[1] - 97:20</p> <p>today ^[29] - 4:5, 10:19, 11:13, 12:11, 16:4, 21:14, 22:16, 23:2, 24:1, 24:16, 27:25, 33:24, 47:17, 50:12, 50:17, 73:1, 73:3, 73:6, 77:3, 78:20, 81:12, 83:2, 111:4, 111:8, 111:12, 127:7, 127:17, 127:22, 141:10</p> <p>today's ^[1] - 51:19</p> <p>together ^[9] - 7:10, 29:2, 40:21, 63:23, 77:2, 82:18, 94:3, 100:18, 109:1</p>	<p>tomorrow ^[10] - 11:13, 68:18, 68:24, 69:16, 69:20, 97:10, 113:12, 120:23, 127:17, 127:23</p> <p>Tomorrow ^[1] - 21:5</p> <p>Tongue ^[2] - 143:11, 143:15</p> <p>Tony ^[4] - 2:3, 16:22, 48:10, 52:15</p> <p>took ^[6] - 22:10, 25:19, 73:25, 93:11, 134:1, 150:9</p> <p>tool ^[1] - 66:1</p> <p>tools ^[1] - 127:1</p> <p>top ^[3] - 42:11, 118:23, 147:25</p> <p>topic ^[1] - 142:1</p> <p>total ^[1] - 78:11</p> <p>totally ^[2] - 66:10, 74:10</p> <p>Totten ^[1] - 20:8</p> <p>touch ^[1] - 37:20</p> <p>touched ^[1] - 35:23</p> <p>touching ^[1] - 35:20</p> <p>towards ^[4] - 42:2, 44:2, 102:1, 143:14</p> <p>track ^[4] - 101:12, 115:19, 147:22, 148:5</p> <p>tracked ^[1] - 101:22</p> <p>tracks ^[3] - 12:22, 73:19, 108:5</p> <p>Tracy ^[1] - 9:23</p> <p>traditional ^[26] - 16:20, 26:16, 26:20, 26:23, 27:13, 27:20, 29:19, 29:24, 30:6, 30:14, 30:18, 32:5, 32:13, 32:16, 33:10, 34:15, 34:17, 38:8, 63:8, 115:4, 116:13, 119:12, 122:17, 132:3, 132:6, 133:9</p> <p>train ^[6] - 44:2, 44:5, 44:10, 44:16, 44:23</p> <p>training ^[35] - 15:5, 23:3, 44:16, 44:17, 44:18, 44:20, 44:24, 45:10, 45:13, 45:16, 46:1, 46:4, 46:9, 63:24, 64:8, 64:11, 65:2, 65:22, 66:2, 66:17, 70:1, 70:4, 75:21, 86:22, 89:12, 90:16, 91:2, 91:8, 96:2, 105:19, 112:21, 112:22, 112:25, 127:14</p> <p>transcribe ^[1] - 24:17</p>	<p>Transcript ^[1] - 1:5</p> <p>transcription ^[1] - 150:11</p> <p>transition ^[1] - 47:3</p> <p>transitioned ^[1] - 46:22</p> <p>translate ^[1] - 18:9</p> <p>transportation ^[1] - 20:16</p> <p>TRANSPORTATION ^[1] - 1:1</p> <p>Transportation ^[14] - 1:9, 4:4, 8:13, 14:13, 15:8, 15:14, 48:25, 52:17, 53:17, 53:23, 54:9, 55:5, 141:11, 148:17</p> <p>Tratebas ^[2] - 2:4, 13:20</p> <p>TRATEBAS ^[1] - 13:20</p> <p>treasure ^[5] - 18:1, 18:4, 18:7, 33:24, 34:20</p> <p>treasures ^[1] - 14:16</p> <p>treat ^[3] - 27:2, 36:2, 130:2</p> <p>treated ^[5] - 71:11, 71:19, 98:12, 133:10, 142:2</p> <p>Treaties ^[1] - 21:16</p> <p>treatment ^[30] - 27:3, 29:24, 32:22, 34:12, 34:13, 34:17, 34:22, 63:6, 63:9, 63:11, 70:12, 70:22, 71:10, 72:17, 73:16, 74:23, 75:1, 75:16, 76:20, 114:18, 114:20, 114:24, 128:8, 128:15, 128:17, 129:18, 130:6, 130:7, 133:4, 141:24</p> <p>Treatments ^[1] - 34:23</p> <p>treatments ^[10] - 27:16, 35:7, 37:23, 38:2, 63:9, 63:13, 63:16, 70:17, 75:12, 98:17</p> <p>Treaty ^[2] - 93:14, 94:15</p> <p>treaty ^[5] - 24:24, 24:25, 80:5, 138:19</p> <p>treble ^[1] - 76:24</p> <p>Tribal ^[13] - 5:15, 6:23, 17:10, 18:18, 19:21, 19:25, 28:15, 28:20, 33:3, 64:16, 70:7, 70:10, 132:8</p> <p>tribal ^[109] - 4:6, 7:13, 7:17, 7:19, 8:14,</p>
T				
<p>table ^[15] - 13:9, 14:3, 17:19, 19:2, 24:19, 61:5, 80:14, 81:12, 82:19, 93:24, 95:6, 95:12, 118:25, 126:13, 147:25</p> <p>tad ^[1] - 75:3</p> <p>tag ^[6] - 77:16, 78:5, 78:18, 79:21, 81:19, 86:5</p> <p>tags ^[1] - 85:7</p> <p>TAIL ^[1] - 24:22</p> <p>Tail ^[2] - 1:18, 24:22</p> <p>talks ^[3] - 57:18, 112:13, 131:23</p> <p>tangent ^[1] - 135:4</p> <p>task ^[1] - 48:24</p> <p>tax ^[1] - 104:22</p> <p>TCP ^[3] - 17:14, 17:16, 79:6</p> <p>TCPs ^[11] - 30:3, 31:23, 32:12, 33:5, 63:15, 71:7, 79:5, 88:21, 112:8,</p>	<p>132:13, 132:17</p> <p>teachers ^[1] - 5:13</p> <p>team ^[6] - 7:7, 7:9, 18:24, 45:15, 51:11, 89:8</p> <p>tech ^[1] - 124:25</p> <p>Tech ^[1] - 23:5</p> <p>template ^[1] - 120:11</p> <p>templates ^[2] - 117:17, 117:23</p> <p>temporary ^[3] - 45:22, 46:21, 47:2</p> <p>term ^[12] - 36:23, 43:20, 44:8, 44:12, 46:7, 46:9, 59:13, 64:5, 64:13, 65:7, 117:2, 149:7</p> <p>terminated ^[1] - 48:19</p> <p>terms ^[34] - 10:4, 28:24, 29:7, 29:16, 30:15, 30:17, 31:11, 33:17, 33:21, 37:25, 38:5, 45:7, 46:8, 53:23, 56:7, 56:8, 75:9, 75:11, 75:14, 75:20, 76:20, 81:2, 86:1, 95:5, 111:13, 112:8, 121:10, 121:11, 123:3, 124:5, 125:20, 128:14, 131:18</p> <p>TERO ^[1] - 64:16</p> <p>Terry ^[1] - 12:13</p> <p>test ^[2] - 87:24, 88:6</p> <p>testing ^[2] - 110:12, 133:1</p> <p>thankful ^[1] - 127:22</p> <p>themselves ^[6] - 93:21, 96:2, 109:14, 109:20, 109:22, 110:7</p> <p>theory ^[2] - 21:11, 143:6</p> <p>they've ^[4] - 5:2, 52:3, 62:4, 125:1</p> <p>They've ^[1] - 35:2</p> <p>thinking ^[11] - 26:3, 32:21, 35:7, 38:5, 80:25, 87:22, 113:5, 119:20, 139:6, 147:18, 148:16</p> <p>third ^[7] - 9:24, 17:23, 43:10, 53:4, 55:14, 56:14, 88:18</p> <p>third-party ^[3] - 53:4, 55:14, 56:14</p> <p>thorough ^[1] - 38:25</p> <p>thoughts ^[5] - 36:14, 47:24, 86:3, 117:15</p> <p>THPO ^[8] - 18:16,</p>	<p>18:20, 18:21, 19:13, 19:18, 25:9, 85:5, 132:18</p> <p>THPOs ^[2] - 99:21, 132:23</p> <p>three ^[23] - 7:18, 12:1, 18:19, 31:10, 37:17, 38:11, 38:16, 41:4, 41:25, 42:2, 44:15, 49:1, 56:10, 67:22, 80:6, 86:19, 112:3, 113:4, 118:21, 130:1, 134:3, 134:4, 137:14</p> <p>three-prong ^[1] - 112:3</p> <p>three-step ^[1] - 31:10</p> <p>throughout ^[3] - 4:24, 40:1, 129:23</p> <p>throwing ^[1] - 71:17</p> <p>thrown ^[2] - 17:3, 149:5</p> <p>Thunder ^[6] - 2:8, 5:1, 5:9, 20:4, 43:15, 139:14</p> <p>THUNDER ^[14] - 4:25, 22:24, 55:16, 55:22, 113:14, 114:9, 118:2, 118:15, 118:19, 119:8, 130:12, 130:20, 131:9, 149:4</p> <p>tie ^[1] - 26:17</p> <p>tied ^[1] - 18:6</p> <p>ties ^[2] - 40:10, 80:6</p> <p>Tim ^[10] - 2:7, 5:14, 6:11, 6:18, 22:17, 77:9, 77:11, 79:9, 84:5</p> <p>timely ^[1] - 10:15</p> <p>timetable ^[1] - 141:16</p> <p>timing ^[3] - 47:16, 48:1, 111:5</p> <p>Title ^[1] - 97:20</p> <p>today ^[29] - 4:5, 10:19, 11:13, 12:11, 16:4, 21:14, 22:16, 23:2, 24:1, 24:16, 27:25, 33:24, 47:17, 50:12, 50:17, 73:1, 73:3, 73:6, 77:3, 78:20, 81:12, 83:2, 111:4, 111:8, 111:12, 127:7, 127:17, 127:22, 141:10</p> <p>today's ^[1] - 51:19</p> <p>together ^[9] - 7:10, 29:2, 40:21, 63:23, 77:2, 82:18, 94:3, 100:18, 109:1</p>	<p>tomorrow ^[10] - 11:13, 68:18, 68:24, 69:16, 69:20, 97:10, 113:12, 120:23, 127:17, 127:23</p> <p>Tomorrow ^[1] - 21:5</p> <p>Tongue ^[2] - 143:11, 143:15</p> <p>Tony ^[4] - 2:3, 16:22, 48:10, 52:15</p> <p>took ^[6] - 22:10, 25:19, 73:25, 93:11, 134:1, 150:9</p> <p>tool ^[1] - 66:1</p> <p>tools ^[1] - 127:1</p> <p>top ^[3] - 42:11, 118:23, 147:25</p> <p>topic ^[1] - 142:1</p> <p>total ^[1] - 78:11</p> <p>totally ^[2] - 66:10, 74:10</p> <p>Totten ^[1] - 20:8</p> <p>touch ^[1] - 37:20</p> <p>touched ^[1] - 35:23</p> <p>touching ^[1] - 35:20</p> <p>towards ^[4] - 42:2, 44:2, 102:1, 143:14</p> <p>track ^[4] - 101:12, 115:19, 147:22, 148:5</p> <p>tracked ^[1] - 101:22</p> <p>tracks ^[3] - 12:22, 73:19, 108:5</p> <p>Tracy ^[1] - 9:23</p> <p>traditional ^[26] - 16:20, 26:16, 26:20, 26:23, 27:13, 27:20, 29:19, 29:24, 30:6, 30:14, 30:18, 32:5, 32:13, 32:16, 33:10, 34:15, 34:17, 38:8, 63:8, 115:4, 116:13, 119:12, 122:17, 132:3, 132:6, 133:9</p> <p>train ^[6] - 44:2, 44:5, 44:10, 44:16, 44:23</p> <p>training ^[35] - 15:5, 23:3, 44:16, 44:17, 44:18, 44:20, 44:24, 45:10, 45:13, 45:16, 46:1, 46:4, 46:9, 63:24, 64:8, 64:11, 65:2, 65:22, 66:2, 66:17, 70:1, 70:4, 75:21, 86:22, 89:12, 90:16, 91:2, 91:8, 96:2, 105:19, 112:21, 112:22, 112:25, 127:14</p> <p>transcribe ^[1] - 24:17</p>	<p>Transcript ^[1] - 1:5</p> <p>transcription ^[1] - 150:11</p> <p>transition ^[1] - 47:3</p> <p>transitioned ^[1] - 46:22</p> <p>translate ^[1] - 18:9</p> <p>transportation ^[1] - 20:16</p> <p>TRANSPORTATION ^[1] - 1:1</p> <p>Transportation ^[14] - 1:9, 4:4, 8:13, 14:13, 15:8, 15:14, 48:25, 52:17, 53:17, 53:23, 54:9, 55:5, 141:11, 148:17</p> <p>Tratebas ^[2] - 2:4, 13:20</p> <p>TRATEBAS ^[1] - 13:20</p> <p>treasure ^[5] - 18:1, 18:4, 18:7, 33:24, 34:20</p> <p>treasures ^[1] - 14:16</p> <p>treat ^[3] - 27:2, 36:2, 130:2</p> <p>treated ^[5] - 71:11, 71:19, 98:12, 133:10, 142:2</p> <p>Treaties ^[1] - 21:16</p> <p>treatment ^[30] - 27:3, 29:24, 32:22, 34:12, 34:13, 34:17, 34:22, 63:6, 63:9, 63:11, 70:12, 70:22, 71:10, 72:17, 73:16, 74:23, 75:1, 75:16, 76:20, 114:18, 114:20, 114:24, 128:8, 128:15, 128:17, 129:18, 130:6, 130:7, 133:4, 141:24</p> <p>Treatments ^[1] - 34:23</p> <p>treatments ^[10] - 27:16, 35:7, 37:23, 38:2, 63:9, 63:13, 63:16, 70:17, 75:12, 98:17</p> <p>Treaty ^[2] - 93:14, 94:15</p> <p>treaty ^[5] - 24:24, 24:25, 80:5, 138:19</p> <p>treble ^[1] - 76:24</p> <p>Tribal ^[13] - 5:15, 6:23, 17:10, 18:18, 19:21, 19:25, 28:15, 28:20, 33:3, 64:16, 70:7, 70:10, 132:8</p> <p>tribal ^[109] - 4:6, 7:13, 7:17, 7:19, 8:14,</p>

<p>11:18, 11:23, 13:7, 13:10, 16:17, 17:7, 26:19, 27:4, 27:10, 27:16, 27:17, 27:25, 28:11, 29:16, 30:1, 30:20, 31:3, 32:24, 33:13, 33:15, 34:2, 34:3, 34:9, 35:14, 39:25, 46:9, 48:13, 48:14, 48:16, 49:1, 50:4, 51:10, 52:13, 55:10, 58:17, 59:14, 65:1, 65:2, 65:25, 66:1, 66:5, 67:14, 68:11, 70:14, 71:25, 75:10, 77:3, 78:20, 79:18, 82:7, 83:21, 86:21, 92:17, 97:5, 98:24, 99:4, 99:6, 99:12, 100:3, 102:3, 103:5, 105:5, 106:3, 106:18, 110:23, 111:22, 112:5, 112:9, 112:11, 112:25, 113:4, 113:8, 113:13, 113:14, 114:20, 115:6, 115:11, 116:9, 116:12, 116:15, 116:23, 117:3, 117:22, 118:6, 118:7, 118:12, 118:21, 119:11, 119:15, 119:20, 121:9, 121:10, 122:7, 122:8, 123:13, 127:24, 132:10, 133:7, 135:24, 142:3, 142:6, 142:16, 142:17</p> <p>TRIBAL [1] - 1:2</p> <p>tribally [1] - 28:3</p> <p>Tribe [34] - 1:18, 1:20, 1:20, 2:3, 2:4, 5:1, 5:8, 5:16, 5:23, 6:13, 6:15, 6:24, 11:10, 12:14, 16:17, 16:22, 16:23, 17:7, 17:9, 18:15, 18:18, 24:23, 48:10, 58:14, 59:6, 59:7, 67:3, 67:20, 67:25, 80:11, 82:24, 83:10, 84:3, 146:23</p> <p>tribe [28] - 6:8, 11:25, 12:14, 14:1, 20:9, 58:25, 59:2, 59:14, 60:21, 67:10, 67:15, 79:17, 80:2, 80:4, 83:1, 83:16, 84:5, 84:21, 94:21, 94:22,</p>	<p>94:24, 103:6, 103:7, 104:19, 104:24, 132:19</p> <p>tribe's [2] - 12:2, 62:9</p> <p>Tribes [7] - 1:14, 13:25, 25:9, 93:9, 96:6, 116:4, 126:15</p> <p>tribes [111] - 5:23, 8:21, 12:4, 14:8, 14:9, 14:14, 14:18, 14:22, 16:18, 17:3, 18:25, 26:18, 26:25, 27:3, 27:6, 28:17, 29:12, 29:20, 30:21, 31:3, 31:10, 32:10, 33:7, 33:8, 33:19, 34:5, 45:9, 45:10, 46:5, 46:6, 50:24, 55:25, 56:1, 56:8, 56:17, 56:18, 56:21, 57:4, 57:17, 57:24, 58:16, 60:14, 60:23, 61:17, 62:12, 63:16, 63:23, 63:25, 64:5, 67:9, 68:5, 68:11, 69:7, 69:12, 71:5, 71:12, 71:18, 77:2, 78:22, 79:6, 79:8, 79:25, 80:13, 80:23, 81:17, 83:8, 83:14, 84:10, 91:6, 93:5, 93:6, 93:8, 93:22, 93:23, 94:13, 94:15, 95:21, 96:1, 97:14, 100:3, 103:23, 104:20, 104:22, 105:1, 105:12, 113:19, 114:4, 114:6, 116:13, 116:14, 117:10, 118:5, 122:14, 122:15, 123:24, 125:14, 125:15, 125:16, 126:4, 128:9, 131:25, 132:4, 132:7, 132:24, 142:13, 146:25, 147:2, 147:3</p> <p>tribes' [3] - 24:24, 69:11, 82:13</p> <p>tricky [1] - 29:21</p> <p>tried [7] - 23:7, 23:12, 28:16, 28:22, 125:12, 127:11</p> <p>true [2] - 91:25, 150:11</p> <p>trust [7] - 21:11, 42:6, 55:25, 65:24, 75:3, 108:15, 109:10</p> <p>trusting [1] - 108:15</p>	<p>truth [1] - 21:5</p> <p>truthful [2] - 21:12, 128:12</p> <p>try [13] - 7:10, 12:17, 24:17, 40:6, 43:1, 43:25, 81:22, 83:2, 93:17, 109:16, 120:12, 124:3, 131:18</p> <p>trying [26] - 5:10, 11:7, 21:2, 21:25, 30:15, 33:18, 40:3, 74:6, 87:9, 87:19, 87:24, 106:16, 109:17, 110:3, 110:15, 110:22, 114:11, 123:19, 124:20, 125:2, 125:4, 126:11, 129:15, 129:16, 130:15, 141:11</p> <p>tub [1] - 106:13</p> <p>tubs [2] - 107:17, 107:18</p> <p>turn [6] - 35:8, 48:14, 61:3, 83:15, 107:8, 138:1</p> <p>turnout [1] - 16:12</p> <p>twice [1] - 129:7</p> <p>two [41] - 5:18, 7:3, 15:25, 19:13, 19:14, 20:15, 20:18, 26:22, 38:20, 38:22, 39:5, 40:13, 40:21, 52:6, 60:14, 64:7, 69:12, 75:6, 75:11, 80:5, 83:4, 85:1, 98:16, 100:1, 100:2, 102:18, 102:20, 110:25, 121:16, 121:17, 129:24, 134:4, 137:14, 137:25, 138:2, 139:14, 140:17, 141:22</p> <p>two-pronged [1] - 75:11</p> <p>two-week [2] - 102:20</p> <p>type [8] - 35:1, 47:2, 56:10, 57:14, 57:15, 78:13, 121:22, 145:7</p> <p>types [22] - 5:18, 35:2, 46:13, 46:22, 52:7, 65:12, 70:22, 74:12, 75:20, 77:16, 78:12, 79:19, 80:21, 81:24, 82:3, 83:21, 98:16, 100:1, 100:10, 144:9, 145:6</p>	<p style="text-align: center;">U</p> <p>U.S [1] - 101:20</p> <p>ultimate [2] - 72:19, 73:16</p> <p>ultimately [6] - 8:23, 8:24, 9:3, 109:12, 111:13, 114:7</p> <p>unanticipated [3] - 28:12, 37:7, 133:8</p> <p>unavoidable [2] - 72:21, 73:10</p> <p>unclear [1] - 147:11</p> <p>uncovered [1] - 28:13</p> <p>under [23] - 6:2, 6:24, 10:4, 11:4, 15:25, 27:1, 29:23, 30:15, 30:17, 32:10, 33:3, 35:11, 35:22, 53:7, 53:20, 61:15, 63:22, 77:17, 94:9, 98:2, 118:13, 122:18, 148:11</p> <p>underlying [2] - 146:12, 146:18</p> <p>underneath [1] - 66:22</p> <p>understood [1] - 48:1</p> <p>undertaking [1] - 132:12</p> <p>unfortunately [1] - 101:9</p> <p>unhindered [1] - 55:7</p> <p>uniform [2] - 100:13, 103:19</p> <p>uniformity [2] - 104:10, 104:25</p> <p>unique [2] - 125:7, 126:7</p> <p>United [3] - 54:23, 126:15, 126:19</p> <p>University [1] - 23:5</p> <p>unless [2] - 55:18, 139:22</p> <p>unlikely [1] - 75:4</p> <p>unresolved [2] - 78:24, 83:10</p> <p>unusual [1] - 56:25</p> <p>unusually [1] - 56:25</p> <p>up [105] - 6:18, 7:11, 8:15, 9:25, 16:4, 17:20, 18:6, 18:11, 19:8, 20:20, 23:3, 27:6, 27:23, 27:24, 31:1, 32:24, 35:2, 38:3, 38:13, 39:15, 40:15, 41:15, 41:17, 45:8, 47:10, 49:5, 51:13, 52:11, 52:18,</p>	<p>56:6, 58:10, 58:15, 23 61:24, 62:16, 64:12, 66:21, 69:5, 69:17, 71:11, 71:13, 71:18, 71:21, 73:15, 74:11, 75:8, 77:6, 77:7, 78:13, 79:6, 79:24, 80:19, 83:20, 84:14, 84:17, 86:13, 90:10, 91:5, 91:10, 91:13, 92:1, 95:5, 99:20, 101:2, 101:20, 101:24, 102:19, 102:22, 103:6, 104:20, 105:7, 105:14, 105:21, 106:1, 106:6, 106:8, 106:25, 107:8, 107:22, 109:2, 109:18, 110:2, 110:9, 110:17, 112:23, 113:18, 113:19, 114:4, 122:7, 122:24, 125:14, 126:11, 126:20, 129:8, 129:10, 129:17, 131:9, 131:12, 131:13, 137:17, 137:23, 143:22, 147:16</p> <p>upheld [2] - 9:3, 9:15</p> <p>uphill [1] - 143:11</p> <p>uphold [2] - 16:19, 126:18</p> <p>upset [1] - 103:21</p> <p>uses [1] - 100:25</p> <p style="text-align: center;">V</p> <p>vacuum [1] - 93:19</p> <p>vague [2] - 96:17, 112:10</p> <p>valid [2] - 130:13, 130:14</p> <p>value [1] - 33:20</p> <p>values [9] - 26:20, 27:20, 33:10, 33:19, 75:14, 115:4, 117:12, 119:24</p> <p>van [1] - 65:25</p> <p>vans [1] - 65:25</p> <p>varies [1] - 98:3</p> <p>variety [1] - 100:11</p> <p>various [3] - 96:22, 98:1, 98:14</p> <p>version [2] - 115:14, 115:18</p> <p>versus [1] - 51:16</p>
---	---	---	--	--

<p>vice [2] - 7:1, 101:8</p> <p>Vickie [2] - 60:2, 110:11</p> <p>view [3] - 17:21, 19:4, 89:7</p> <p>viewpoints [1] - 51:15</p> <p>Village [1] - 20:25</p> <p>violations [1] - 84:14</p> <p>visited [1] - 101:8</p> <p>visiting [1] - 90:20</p> <p>Volcanos [1] - 15:20</p> <p>volume [1] - 107:9</p> <p>voluntary [1] - 35:1</p> <p>volunteer [4] - 99:20, 106:25, 107:7, 107:10</p> <p>volunteers [3] - 102:2, 106:23, 107:6</p>	<p>weekly [1] - 102:17</p> <p>weeks [5] - 38:20, 38:22, 44:20, 102:18, 102:23</p> <p>weeks' [1] - 140:18</p> <p>welcome [1] - 22:1</p> <p>well-aware [1] - 137:5</p> <p>Wells [3] - 101:2, 101:3, 101:7</p> <p>Wessington [1] - 17:17</p> <p>west [8] - 8:23, 40:7, 40:9, 43:14, 43:19, 43:21, 44:1, 96:4</p> <p>western [1] - 87:4</p> <p>wetland [1] - 51:21</p> <p>wetlands [3] - 35:24, 35:25, 137:21</p> <p>whatever's [1] - 22:6</p> <p>whatnot [1] - 147:6</p> <p>whatsoever [1] - 54:3</p> <p>Wheel [2] - 93:13, 94:16</p> <p>wheels [1] - 117:19</p> <p>White [2] - 1:15, 19:17</p> <p>WHITE [2] - 17:9, 19:17</p> <p>Whiting [2] - 1:21, 17:9</p> <p>Whitted [2] - 1:12, 19:24</p> <p>WHITTED [4] - 19:24, 105:11, 105:16, 124:23</p> <p>whole [17] - 18:11, 34:20, 34:21, 40:2, 64:25, 65:9, 78:25, 79:5, 79:10, 80:20, 85:8, 85:19, 118:9, 120:8, 129:3, 136:6</p> <p>wholeheartedly [1] - 80:1</p> <p>wholistic [1] - 117:13</p> <p>Wiconi [1] - 125:13</p> <p>wide [3] - 43:7, 130:4, 136:24</p> <p>wife [1] - 17:6</p> <p>wiggle [1] - 73:14</p> <p>wildlife [1] - 12:22</p> <p>William [2] - 2:2, 20:7</p> <p>willing [5] - 44:22, 45:20, 60:23, 60:25, 96:1</p> <p>Williston [3] - 11:19, 12:6, 94:1</p> <p>wind [1] - 17:16</p> <p>Winnebago [2] - 67:20, 67:25</p> <p>winter [2] - 41:14, 41:15</p>	<p>wisdom [1] - 109:9</p> <p>wish [1] - 97:4</p> <p>WITHROW [4] - 15:4, 59:10, 141:22, 149:9</p> <p>Withrow [3] - 1:10, 15:4, 58:24</p> <p>withstanding [1] - 97:8</p> <p>witness [1] - 125:17</p> <p>witnessed [2] - 88:11, 88:17</p> <p>Wittler [2] - 3:4, 150:18</p> <p>WITTLER [1] - 150:5</p> <p>women [1] - 22:15</p> <p>wonderful [8] - 16:12, 18:20, 19:1, 124:25, 125:10, 126:17, 126:21, 126:23</p> <p>wondering [2] - 138:18, 139:1</p> <p>woodwork [1] - 65:18</p> <p>Word [3] - 115:14, 115:18, 119:5</p> <p>word [3] - 99:14, 111:21, 141:22</p> <p>wording [4] - 33:3, 33:9, 33:23, 112:18</p> <p>words [8] - 21:14, 55:16, 82:23, 85:24, 109:8, 120:8, 127:22, 149:5</p> <p>workable [1] - 120:25</p> <p>worker [1] - 6:12</p> <p>workers [1] - 107:17</p> <p>works [7] - 22:12, 53:3, 53:18, 53:22, 54:8, 55:15, 146:20</p> <p>world [5] - 14:14, 89:7, 95:9, 96:17, 126:21</p> <p>worth [1] - 35:20</p> <p>woven [1] - 80:9</p> <p>Wright [2] - 40:7, 44:2</p> <p>write [1] - 66:21</p> <p>writing [1] - 116:5</p> <p>written [2] - 82:11, 89:25</p> <p>wrote [2] - 33:11, 64:9</p> <p>Wyoming [22] - 8:7, 9:23, 13:21, 13:22, 20:2, 20:5, 138:25, 139:10, 139:13, 139:18, 139:20, 140:1, 140:13, 140:14, 143:9, 144:20, 144:24, 146:6, 146:8, 146:10, 146:16</p>	<p>Y</p> <p>Yankton [2] - 1:21, 17:12</p> <p>yard [5] - 40:7, 43:14, 43:19, 43:21, 43:23</p> <p>year [7] - 15:16, 15:17, 23:10, 47:18, 110:10, 111:4, 133:22</p> <p>year's [1] - 111:17</p> <p>years [22] - 7:3, 7:15, 7:18, 8:1, 8:24, 15:19, 18:19, 19:14, 20:15, 22:11, 24:6, 35:16, 37:17, 41:25, 44:15, 55:18, 94:1, 94:2, 95:7, 127:3, 141:8</p> <p>years' [1] - 21:14</p> <p>yell [1] - 76:12</p> <p>yesterday [1] - 138:20</p> <p>YOUNG [1] - 6:10</p> <p>young [1] - 22:5</p> <p>Young [2] - 1:17, 6:10</p> <p>Youpee [4] - 1:14, 12:7, 13:24, 116:3</p> <p>YOUPEE [18] - 13:24, 54:7, 54:11, 54:14, 54:17, 55:23, 56:7, 56:12, 56:17, 57:8, 62:22, 75:5, 115:6, 115:9, 115:12, 115:21, 116:1, 117:14</p> <p>yourself [1] - 116:20</p>
<p>W</p> <p>Wachovia [1] - 101:1</p> <p>wage [1] - 103:3</p> <p>Wahpeton [5] - 1:12, 1:23, 19:21, 19:25, 103:7</p> <p>wait [5] - 58:6, 67:21, 92:20, 120:23, 148:16</p> <p>walk [5] - 24:19, 29:15, 80:4, 84:7, 90:19</p> <p>walked [2] - 88:13, 136:20</p> <p>Wall [8] - 40:15, 40:16, 40:17, 40:19, 43:23, 72:24, 73:2, 73:8</p> <p>wants [3] - 97:9, 120:14</p> <p>Washington [1] - 7:15</p> <p>wasichus [1] - 21:23</p> <p>Wasta [1] - 40:20</p> <p>Waste'win [2] - 1:17, 6:10</p> <p>watch [2] - 21:14, 58:6</p> <p>watching [1] - 37:5</p> <p>Water [1] - 125:13</p> <p>water [2] - 123:22, 148:6</p> <p>ways [16] - 10:1, 15:11, 16:8, 20:14, 36:2, 44:8, 72:12, 72:17, 99:7, 99:8, 102:5, 110:6, 142:7, 142:8, 142:11</p> <p>wear [1] - 17:13</p> <p>weather [2] - 41:13</p> <p>week [4] - 102:18, 102:20, 137:8</p>		<p>Z</p> <p>zero [2] - 66:4, 66:5</p>	